

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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	)	ENTERED
<b>TOTAL PETROCHEMICALS &amp; REFINING</b>	)	Office of Proceedings
<b>USA, INC.</b>	)	November 20, 2015
	)	Part of
<b>Complainant,</b>	)	Public Record
	)	
<b>v.</b>	)	<b>Docket No. NOR 42121</b>
	)	
<b>CSX TRANSPORTATION, INC.</b>	)	
	)	
<b>Defendant.</b>	)	
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**CSX TRANSPORTATION, INC.'S REPLY TO TOTAL PETROCHEMICALS &  
REFINING USA, INC.'S COMPLIANCE EVIDENCE AND SUPPLEMENTAL  
OPENING EVIDENCE**

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**Filing Contains Color Images**

SHORT FORMS FOR FREQUENTLY CITED CASES

The following short form case citations are used herein:

<i>AEPCO 2011</i>	<i>Arizona Electric Power Cooperative, Inc. v. Burlington Northern &amp; Santa Fe Railway Co. &amp; Union Pacific Railroad Co.</i> , STB Docket No. 42113, (served Nov. 16, 2011)
<i>Coal Rate Guidelines</i>	<i>Coal Rate Guidelines, Nationwide</i> , 1 I.C.C. 2d 520 (1985)
<i>Duke/CSXT</i>	<i>Duke Energy Corp. v. CSX Transportation, Inc.</i> , 7 S.T.B. 402 (2004)
<i>DuPont</i>	<i>E.I. du Pont de Nemours &amp; Co. v. Norfolk Southern Railway Co.</i> , STB Docket No. 42125 (served Mar: 24, 2014)
<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>Otter Tail</i>	<i>Otter Tail Power Co. v. BNSF Railway Co.</i> , STB Docket No. 42071 (served Jan. 27, 2006)
<i>PPL</i>	<i>PPL Montana v. BNSF Railway Co.</i> , 6 S.T.B. 286 (2002)
<i>SAC Procedures</i>	<i>General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases</i> , 5 S.T.B. 441 (2001)
<i>SunBelt</i>	<i>SunBelt Chlor Alkali Partnership v. Norfolk Southern Railway Co.</i> , STB Docket No. 42130 (served June 20, 2014)
<i>Supplemental Evidence Order</i>	<i>Total Petrochemicals &amp; Refining USA, Inc. v. CSX Transp., Inc.</i> , STB Docket No. 42121 (served July 24, 2015)
<i>TMPA</i>	<i>Texas Municipal Power Agency v. Burlington Northern &amp; Santa Fe Railway Co.</i> , 6 S.T.B. 573 (2003)
<i>WFA</i>	<i>Western Fuels Ass'n &amp; Basin Elec. Power Cooperative v. BNSF Railway Co.</i> , STB Docket No. 42088 (served Sept. 10, 2007)
<i>WP&amp;L</i>	<i>Wisconsin Power &amp; Light v. Union Pac. R.R. Co.</i> , 5 S.T.B. 955 (2001)

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CSX Transportation, Inc. (“CSXT”) submits the following Reply to Total Petrochemicals & Refining USA, Inc.’s (“TPI’s”) Compliance Evidence and Supplemental Opening Evidence. In its Supplemental Evidence, TPI “doubles down” on the deficient train service plan that it presented on Opening and Rebuttal. As CSXT has demonstrated, TPI’s Rebuttal train list failed to account for more than 20,000 “industrial yard trains” and thousands of other local trains that provide critical first mile and last mile service between TPIRR yards and customer facilities. In this supplemental round of Evidence, TPI has again failed to submit a feasible operating plan. TPI’s Supplemental Opening Evidence presents three alternate “Scenarios”, each of which is riddled with flaws and each of which should be rejected.

TPI’s “Scenario #1” suffers from the same fatal flaws as its Opening and Rebuttal evidence:

- It fails to provide all of the necessary industrial yard trains to serve the selected traffic.
- It fails to account for thousands of local trains that are necessary to provide complete origin-to-destination service for the selected traffic.
- It fails to provide sufficient yard staffing to enable TPIRR to perform the required in-yard switching activities.

TPI’s “Scenario #2” also suffers from flaws that render it unworkable:

- Its “Y” train list is inaccurate because its selection methodology is flawed.
- The “Y” Train List includes nearly 1,800 trains that operate at locations entirely off-SARR.
- Its yard job assignments are woefully inadequate to account for all of the work necessary to handle the 25,119 industrial yard trains TPI posits.

TPI’s “Scenario #3” suffers from the same defects as “Scenario #2” and then some.

- TPI’s Supplemental Evidence provides no support for the proposition that its contemplated three-interchange service would be acceptable for the high-priority UPS and Threads Express traffic.

- TPI’s transit time analysis contains methodological errors that, once corrected, illustrate that the TPIRR’s transit times are overall slower than those achieved by CSXT for the express intermodal service.

In contrast to these flawed “Scenarios”, CSXT’s evidence accounts for a SARR that offers complete end-to-end service for all traffic; that accounts for the trains—including local and “Y” trains—necessary to serve the traffic; and that accounts for the staffing necessary to serve that traffic. For the reasons discussed herein and in CSXT’s prior evidentiary submissions, the Board should reject each of TPI’s “Scenario” operating plans and adopt CSXT’s Supplemental Train List and operating plan as the basis for decision in this case.

**A. TPI’s Supplemental Scenario #1 Does Not Account For All Of The Train Service Required To Serve The TPIRR’s Selected Traffic.**

“An operating plan must provide full service to the selected traffic group, including the trains necessary to move local traffic between yards and shipment origins and destinations.” *Total Petrochemicals & Refining USA, Inc. v. CSX Transp., Inc.*, STB Docket No. 42121, at 6 (served July 24, 2015) (“*Supplemental Evidence Order*”) (citing *E.I. du Pont de Nemours & Co. v. Norfolk Southern Ry. Co.*, STB Docket No. 42125, at 38 (served Mar. 24, 2014) (“*DuPont*”). In its Reply Evidence, CSXT demonstrated that TPI’s Opening train service plan failed to account for literally tens of thousands of “industrial yard trains” and local trains that perform pick ups and set offs at customer facilities along the TPIRR network.<sup>1</sup> On Rebuttal, TPI added some (but not all) of those local trains to its train list, but categorically rejected every one of the 28,860 industrial yard trains identified by CSXT as necessary to provide complete service to TPIRR’s selected traffic.<sup>2</sup> The *Supplemental Evidence Order* afforded TPI a third opportunity

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<sup>1</sup> See CSXT Reply at III-C-15 to III-C-36.

<sup>2</sup> See TPI Reb. at III-C-38 to III-C-44, III-C-61 to III-C-74. See also TPI Supp. at III-C-4 (“in Rebuttal, TPI rejected CSXT’s claim [regarding the need for additional industrial yard trains] in its entirety.”)

(following its Opening and Rebuttal submissions) to submit a train service plan that included “all historic trains that deliver and pick up SARR traffic at shipper locations.”<sup>3</sup> The Board cautioned that “if we determine that the disputed local trains are necessary, we will not be able to accept TPI’s operating plan regardless of whether it would otherwise be acceptable.”<sup>4</sup>

Nevertheless, TPI takes the position that its so-called “Scenario #1”—which incorporates the same train list as its Rebuttal Evidence—“provides a superior operating plan that includes all of the trains, including ‘Y’ trains and local trains that are necessary to provide complete transportation service to the customers of the TPIRR.”<sup>5</sup> Indeed, TPI asserts that the Board’s *Supplemental Evidence Order* was “unnecessary.”<sup>6</sup> Contrary to those assertions, the Rebuttal train service plan incorporated into TPI’s Supplemental “Scenario #1” remains insufficient to provide complete service to its selected traffic.

### 1. Industrial Yard Trains

The central premise underlying TPI’s operating evidence is that TPIRR’s car classification and train service plans are the same as those utilized by CSXT in the Base Year:

Because the TPIRR operates the same trains with the same consists as CSXT over the same routes and through the same yards in the same locations to serve the same customers as the real world CSXT, there is no need to create [a] new blocking plan[.].<sup>7</sup>

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<sup>3</sup> *Supplemental Evidence Order* at 7.

<sup>4</sup> *Id.* at 6.

<sup>5</sup> TPI Supp. at I-9.

<sup>6</sup> *Id.* at III-C-3.

<sup>7</sup> TPI Reb. at III-C-7 (emphasis added). *See also Id.* at III-C-105 (“As TPI stated in Opening, because its operating plan runs the same trains with the same blocks through the same yards as the real world CSXT operated in the Base Year, TPI has adopted CSXT’s actual blocking and train service plans during that time period.”); TPI Op. at III-C-5 (TPIRR trains “essentially mirror the movement of the corresponding CSXT traffic”).

Having made a methodological decision to “mirror” CSXT’s real-world train operations, TPI must account for every CSXT Base Year train that participated in handling TPIRR’s selected traffic, regardless of its nominal train symbol. Failing to do so constitutes a failure to demonstrate that TPI’s SARR provides complete train service to its selected traffic group.

TPI also purported to adopt—without change—CSXT’s real-world car classification and blocking plan.<sup>8</sup> Based on that fundamental assumption, TPI claims that it was unnecessary for it to develop a car blocking and classification plan tailored to TPIRR’s general freight traffic.<sup>9</sup> In *SunBelt*, the Board cautioned that:

[i]f a complainant adopts the incumbent railroad’s car classification and blocking plan, and the complainant modifies or removes a facility, or reduces staffing from the incumbent’s classification and blocking plan, it would need to establish that the SARR could still adequately serve the traffic group.<sup>10</sup>

TPI’s “Scenario #1” fails to satisfy this evidentiary requirement. The yard crew and locomotive counts posited by TPI on Rebuttal represent a reduction of nearly 20 percent from the number of yard assignments (including industrial yard trains) deployed by CSXT in its real-world Base Year operations. The sole rationale proffered by TPI for that massive reduction in yard staffing is its claim that TPIRR supposedly would need to classify fewer cars than CSXT at yards replicated by the SARR. However, TPI’s reasoning is both conceptually invalid and mathematically flawed. TPI’s Rebuttal train service plan does not come close to accounting for

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<sup>8</sup> See TPI Reb. at III-C-7, III-C-105.

<sup>9</sup> TPI Op. at III-C-12 (“Because TPI has mirrored the critical aspects of CSXT’s current train operations, there is no need to develop new individual-shipment plans or blocking plans for traffic moving over the TPIRR system.”).

<sup>10</sup> *SunBelt Chlor Alkali P’ship v. Norfolk Southern Ry. Co.*, STB Docket No. 42130, at 16 (served June 20, 2014) (“*SunBelt*”) (emphasis added).

all of the industrial “Y” trains needed to handle the selected traffic between TPIRR serving yards and customer facilities. Therefore, TPI’s “Scenario #1” is not feasible and must be rejected.<sup>11</sup>

TPI explains the basis for its reduction in “Y” trains assigned to TPIRR yards as follows:

CSXT’s Reply yard jobs evidence represents the maximum number of crews and locomotives that could possibly be needed to provide all yard train services for the universe of CSXT’s historical traffic—including so-called ‘Y’ trains—because CSXT assigned the same total yard jobs to the TPIRR as the real-world CSXT in 2010 . . . . But because the TPIRR’s traffic is a subset of CSXT’s 2010 traffic, CSXT’s Reply yard jobs evidence necessarily overstates the yard jobs that the TPIRR requires. TPI, therefore, appropriately reduced the number of “Y” trains to reflect the TPIRR’s smaller traffic group.<sup>12</sup>

Based upon this rationale, TPI “scaled down” CSXT’s real-world yard assignments by applying a metric described by TPI as “cars classified per crew.”<sup>13</sup> Specifically, TPI reduced “Y” train assignments at TPIRR yards based on the difference between the number of cars classified by CSXT and TPI’s (inaccurate) count of the cars that TPIRR would need to classify at those locations.<sup>14</sup> According to TPI, “[its] assignment of yard jobs produces nearly identical productivity to CSXT’s actual experience in 2010 and 2013 in hump yards.”<sup>15</sup>

TPI’s rationale for slashing CSXT’s real-world yard staffing (including the number of industrial yard trains that serve customer facilities) is invalid, and its yard crew and locomotive estimates substantially understate TPIRR’s actual requirements. The number of crews and

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<sup>11</sup> See *DuPont* at 37-39 (rejecting complainant’s operating plan for failing to account for all trains required to provide complete carload service).

<sup>12</sup> TPI Supp. at III-C-9 (emphasis in original) (footnote omitted). See also TPI Supp. at I-11.

<sup>13</sup> TPI Reb. at III-C-10 to III-C-11, III-C-131 to III-C-135.

<sup>14</sup> TPI Reb. at III-C-131 to III-C-135.

<sup>15</sup> TPI Reb. at III-C-131 (emphasis added). See also TPI Supp. at III-C-9 (claiming that TPI’s yard staffing “maintains the same level of yard productivity as the real world CSXT, as measured by cars classified per hump job.” (emphasis added).

locomotives required to perform yard switching is not directly proportional to the average number of cars per day that move through a yard (as TPI assumes). Rather, the work performed by crews within a hump yard consists primarily of switching movements—for example, “shoving” cars from a receiving track to the hump, “pulling” cuts of cars from the classification bowl to a departure track, or switching bad ordered cars to a RIP track.<sup>16</sup> Likewise, the daily workload of crews within a flat switching yard consists of switching cars out of and into trains as they arrive at and depart from the yard. The time required to complete each switch movement (and, therefore, the number of switch movements that a crew can realistically perform during a single shift) is not determined by the number of cars in each block that is switched. Rather, it depends upon a variety of operational circumstances, including the distance involved in each switch movement, whether the crew encounters conflicting train movements within the yard, whether the crew must stop to align switches manually, and the late arrival of inbound trains (which can delay the completion of blocks needed to build outbound trains). The premise underlying TPI’s yard train staffing estimates—*i.e.*, that a yard crew’s productivity is a function of the number of cars that it handles per shift—is simply not consistent with real-world railroading. If Yard Crew A switches six blocks containing a total of 100 cars from the classification bowl to departure tracks during a single shift, and Yard Crew B also completes six switch movements between the classification and departure areas (albeit with a total of only 93 cars) during the same shift, Yard Crew B is no less “productive” than Yard Crew A.<sup>17</sup> Both crews are necessary to serve the traffic moving through the yard.

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<sup>16</sup> See CSXT Reply Ex. III-C-1 (Video).

<sup>17</sup> TPI’s selected traffic group includes 93% of CSXT’s system-wide carload traffic. See CSXT Reply at III-C-62, Figure III-C-5; CSXT Reply WP “TPIRR Selected CSXT Traffic.xlsx.” However, as discussed below, TPIRR’s traffic includes virtually 100% of the cars that CSXT’s

Moreover, the difference between the aggregate number of merchandise cars in CSXT's real-world traffic base and the percentage of those cars selected by TPI does not support the massive reduction in yard staffing posited by TPI. TPI's workpapers indicate that the 7% of CSXT's system-wide carload traffic excluded by TPI consists of (i) cars that moved only over lines that are not part of the TPIRR network, (ii) cars moving on merchandise or unit trains operating less than 10 miles on TPIRR, and (iii) a small number of cars on local trains originating off-SARR and moving to an on-SARR customer location.<sup>18</sup> As CSXT Supplemental Reply WP "CSXT Non-TPIRR Merch.xlsx" shows, 95% of the CSXT carload traffic that TPI excluded from TPIRR's traffic group did not traverse a single hump yard on the SARR. Of the remaining 5% of that excluded traffic, the vast majority passed only through the CSXT hump yard at Waycross, GA. Indeed, the only other CSXT hump yards that handled any carload traffic excluded by TPI were Cincinnati, OH and Hamlet, NC—in both cases, the excluded cars account for fewer than 10 cars per day.<sup>19</sup> In short, TPI's decision to exclude approximately 7% of CSXT's system-wide carload traffic would have a negligible impact on TPIRR's switching requirements and provides no support whatsoever for the 18% reduction in hump yard crews, from the 262 crews employed by CSXT in its real-world operations to 216 crews, posited by TPI.

In the present case, TPI's strategic decision to adopt CSXT's real-world yard service plan without modification dictates that TPIRR would need the same number of yard crews as CSXT. In order to replicate CSXT's real-world car classification and blocking plan, TPIRR crews must

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historical industrial yard trains moved between On-SARR serving yards and customer origins and destinations.

<sup>18</sup> See TPI Op. Ex. III-C-1 at 22; CSXT Supp. Reply WP "CSXT Non-TPIRR Merch.xlsx."

<sup>19</sup> See CSXT Supp. Reply WP "CSXT Non-TPIRR Merch.xlsx."

build the same number of blocks and perform the same yard switching movements at the same locations as CSXT did in 2010. TPI has not identified any alleged inefficiency in CSXT’s yard operations that would enable TPIRR to perform the same yard activities as CSXT with 97 fewer yard crews than the 506 daily assignments that CSXT employed in its real-world operations. *See Sunbelt* at 16.<sup>20</sup>

More importantly, the (supposed) difference between the number of car classifications that TPIRR and CSXT perform within their yards provides no justification whatsoever for reducing the number of “industrial yard trains” needed to pick up and deliver cars at TPIRR customer facilities. Although TPIRR’s Base Year carload volume represents, in the aggregate, 93% of CSXT’s 2010 system-wide merchandise traffic, the TPIRR traffic group does not consist of only 93% of the cars that moved to and from individual TPIRR-served customer facilities.

Rather, as described above, the vast majority of cars excluded by TPI did not traverse the rail lines and yards replicated by the SARR. In virtually every instance in which TPI selected traffic moving to or from a particular customer facility, TPI included all of the cars moving to and from that customer in its selected traffic group. In other words, TPIRR’s selected traffic group is not a “subset” of the CSXT traffic moving to and from individual TPIRR-served

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<sup>20</sup> Although TPI conceded on Rebuttal that TPIRR would need “support jobs” to conduct efficient yard operations, it nonetheless reduced the number of CSXT’s real-world support personnel by 41%, based upon the supposed difference between the number of cars classified by CSXT and TPIRR, respectively. TPI Reb. at III-C-135 to III-C-136. The tasks performed by yard support personnel—including aligning switches, protecting shove movements, and delivering crews or work orders to trains at their locations (so that they do not need to stop at the yard office)—are unrelated to the number of cars moving through the yard on a given day. *See* CSXT Reply Ex. III-C-1 (Video) at 6:24. For example, if a support switchman aligns switches for an inbound train (eliminating the delay that would otherwise result if the train’s conductor were required to step off the train to do so), it matters little whether the train contains 100 cars or (based upon TPI’s selected traffic volume) only 93 cars. TPI has not proffered any persuasive rationale for adjusting CSXT’s yard support staffing on the basis of the relative number of cars moving through TPIRR and CSXT yards.

customer facilities, but instead includes virtually 100% of that traffic.<sup>21</sup> Therefore, TPIRR would be required to pick up and deliver the same number of merchandise cars at almost every TPIRR-served customer facility as CSXT did during the Base Year. Indeed, TPI itself states that TPIRR would handle local traffic in “the same trains with the same consists as CSXT . . . through the same yards in the same locations to serve the same customers as the real world CSXT.” TPI Reb. at III-C-7 (emphasis added). Accordingly, TPIRR would necessarily need to operate the same number of “industrial yard trains” as CSXT did during the Base Year.

Even if the rationale underlying the number of “Y” trains that TPI included in its “Scenario #1” were conceptually valid—and, for the reasons discussed above, it is not—the methodology that TPI applied in developing TPIRR’s “Y” train requirements is fundamentally flawed, for several reasons.

First, TPI’s Rebuttal yard train analysis is premised upon a level of productivity that TPIRR cannot achieve. TPI’s claim that its calculations “produce[] nearly identical productivity to CSXT’s actual experience in 2010 and 2013” is demonstrably incorrect.<sup>22</sup> TPI’s yard staffing calculations are based exclusively on the CSXT data for 2013.<sup>23</sup> For example, TPI WP “Yard & Support Job Comparison\_Supplemental.xlsx” indicates that, at Willard, OH, CSXT classified an average of 1,192 cars per day and deployed 20.55 daily yard assignments during 2010.<sup>24</sup> Based on TPI’s methodology, CSXT achieved daily “productivity” of 58.0 cars per crew at Willard in

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<sup>21</sup> See footnote 17, *supra*.

<sup>22</sup> TPI Reb. at III-C-131 (emphasis added).

<sup>23</sup> See TPI Reb. WP “Yard & Support Job Comparison.xlsx;” TPI Supp. WP “Yard & Support Job Comparison\_Supplemental.xlsx.”

<sup>24</sup> See TPI Supp. WP “Yard & Support Job Comparison\_Supplemental.xlsx,” Line 1, Columns 2 and 3. The 1,870 quarterly yard jobs in Column 3 represent 20.55 yard assignments per day (1,870 ÷ 91 days = 20.55).

that year.<sup>25</sup> However, in 2013, CSXT yard crews at Willard achieved significantly higher “productivity,” classifying 1,402 cars per day with 20.48 crews, or 68.46 cars per crew.<sup>26</sup> In calculating the number of yard crews that TPIRR would need at Willard, TPI applied only the higher “productivity” figure (68.46 cars per crew) that CSXT achieved during 2013.<sup>27</sup> Similarly, at Avon (Indianapolis) Yard, CSXT classified an average of 1,358 cars per day with 21.47 crews during 2010, resulting in “productivity” of 63.25 cars per crew.<sup>28</sup> In 2013, CSXT’s “productivity” at Avon improved to 70.57 cars per crew, as 21.85 daily yard crews classified an average of 1,542 cars per day.<sup>29</sup> TPI’s yard crew count for Avon is based exclusively on the higher number of cars per crew experienced by CSXT in 2013.<sup>30</sup> TPI applied the same approach in determining the number of “Y” crew assignments at TPIRR flat switching yards. For example, at Jacksonville, FL, the data indicate that CSXT classified 621 cars per day during 2010 with 19.76 daily yard assignments, resulting in “productivity” of 31.43 cars per crew.<sup>31</sup> In

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<sup>25</sup>  $1,192 \text{ cars} \div 20.55 \text{ crews} = 58.0 \text{ cars per crew.}$

<sup>26</sup> See TPI Supp. WP “Yard & Support Job Comparison\_Supplemental.xlsx,” Line 1, Columns 4 and 5. The 1,864 quarterly yard jobs in Column 5 represent 20.48 yard assignments per day ( $1,864 \div 91 \text{ days} = 20.48$ ).  $1,402 \text{ cars} \div 20.48 \text{ crews} = 68.46 \text{ cars per crew.}$

<sup>27</sup> See TPI Supp. WP “Yard & Support Job Comparison\_Supplemental.xlsx,” Line 1, Columns 10 and 11. The 1,421 quarterly yard jobs in Column 10 represent 15.62 yard assignments per day ( $1,421 \div 91 \text{ days} = 15.62$ ).  $1,069 \text{ cars} \div 15.62 \text{ crews} = 68.44 \text{ cars per crew.}$

<sup>28</sup> See TPI Supp. WP “Yard & Support Job Comparison\_Supplemental.xlsx,” Line 3, Columns 2 and 3. The 1,954 quarterly yard jobs in Column 3 represent 21.47 yard assignments per day ( $1,954 \div 91 \text{ days} = 21.47$ ).  $1,358 \text{ cars} \div 21.47 \text{ crews} = 63.25 \text{ cars per crew.}$

<sup>29</sup> See TPI Supp. WP “Yard & Support Job Comparison\_Supplemental.xlsx,” Line 3, Columns 4 and 5. The 1,988 quarterly yard jobs in Column 5 represent 21.85 yard assignments per day ( $1,988 \div 91 \text{ days} = 21.85$ ).  $1,542 \text{ cars} \div 21.85 \text{ crews} = 70.57 \text{ cars per crew.}$

<sup>30</sup> See TPI Supp. WP “Yard & Support Job Comparison\_Supplemental.xlsx,” Line 3, Columns 10 and 11. The 1,620 quarterly yard jobs in Column 10 represent 17.80 yard assignments per day ( $1,620 \div 91 \text{ days} = 17.80$ ).  $1,256 \text{ cars} \div 17.80 \text{ crews} = 70.56 \text{ cars per crew.}$

<sup>31</sup> See TPI Supp. WP “Yard & Support Job Comparison\_Supplemental.xlsx,” Line 15, Columns 2 and 3. The 1,798 quarterly yard jobs in Column 3 represent 19.76 yard assignments per day ( $1,798 \div 91 \text{ days} = 19.76$ ).  $621 \text{ cars} \div 19.76 \text{ crews} = 31.43 \text{ cars per crew.}$

2013, CSXT achieved nearly double the “productivity” it experienced at Jacksonville in 2010, classifying an average of 1,033 cars per day with only 17.86 crews, or 57.84 cars per crew.<sup>32</sup> In calculating TPIRR’s crew requirement for Jacksonville, TPI applied only the much higher 2013 “productivity” measure of 57.84 cars.<sup>33</sup>

TPI’s self-serving approach of basing TPIRR’s “Y” train requirements exclusively on CSXT’s 2013 operations is unsupported by the record. As the examples cited above demonstrate, CSXT achieved a significant improvement in yard productivity between 2010 and 2013—an improvement that was made possible by a substantial investment in remote control locomotive technology at CSXT yards. As CSXT Opening Exhibit III-C-1 (Video at 2:00 to 2:10, 4:30 to 4:50, 6:22 to 7:30) illustrates, the ability to control yard locomotives remotely significantly enhances the productivity of yard crews by eliminating the need to step on and off locomotives frequently to align switches and to inspect hoses and connections while performing switch movements within the yard. Nowhere in its operating evidence did TPI posit the use of remote control technology at TPIRR yards—much less account for the costs associated with acquiring that technology and training TPIRR crews to perform remote control operations.<sup>34</sup> Absent such investment, TPI cannot credibly take the position that TPIRR would achieve the same level of yard productivity as CSXT did in 2013. Thus, even if TPI’s “productivity”-based approach to determining yard train requirements were otherwise valid (and, for the reasons

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<sup>32</sup> See TPI Supp. WP “Yard & Support Job Comparison\_Supplemental.xlsx,” Line 15, Columns 4 and 5. The 1,625 quarterly yard jobs in Column 5 represent 17.86 yard assignments per day ( $1,625 \div 91 \text{ days} = 17.86$ ).  $1,033 \text{ cars} \div 17.86 \text{ crews} = 57.84 \text{ cars per crew}$ .

<sup>33</sup> See TPI Supp. WP “Yard & Support Job Comparison\_Supplemental.xlsx,” Line 15, Columns 10 and 11. The 729 quarterly yard jobs in Column 10 represent 8.01 yard assignments per day ( $729 \div 91 \text{ days} = 8.01$ ).  $464 \text{ cars} \div 8.01 \text{ crews} = 57.93 \text{ cars per crew}$ .

<sup>34</sup> Indeed, TPI did not even equip TPIRR flat switching yards or receiving and departure tracks at hump yards with power switches, which are necessary to conduct remote control operations. See TPI Op. at III-B-10.

discussed above, it is not), TPI yard staffing must be based upon CSXT’s experience in 2010, rather than in 2013.

As Figure 1 shows, if TPI’s own yard staffing methodology is applied based on the level of “productivity” achieved by CSXT in 2010 (rather than 2013), the number of yard crews required by TPIRR increases from 409 crews per day to 487 daily crews, only 19 (or 4%) fewer yard crews than CSXT employed in its real-world operations.

**FIGURE 1**<sup>35</sup>

	<b>TPI Rebuttal Yard Crews (based on CSXT 2013 Productivity)</b>	<b>TPI Rebuttal, Restated (based on CSXT 2010 Productivity)</b>	<b>CSXT Reply</b>
Hump Yards	216.0	250.5	262.4
Flat Yards	193.3	236.1	243.2
Total	<b>409.2</b>	<b>486.6</b>	<b>505.5</b>

Second, TPI’s truncated yard staffing is premised on its assertion that “the TPIRR classifies 15[%] fewer cars at hump yards in 2010 than the real-world CSXT.”<sup>36</sup> That statement is not based on TPI’s own operating plan, but rather on the difference between the number of hump yard car classifications in CSXT’s Reply Evidence and CSXT’s actual 2010 experience.<sup>37</sup> CSXT’s Reply car classification counts are based on its MultiRail operating plan, which developed more efficient trip plans (with fewer intermediate car handlings) for some TPIRR cars. However, because the fundamental assumption underlying TPI’s operating plan is that TPIRR “mimics” CSXT’s actual historical operations, the number of car classifications performed by TPIRR must be based on CSXT’s historical yard classification counts.

<sup>35</sup> See CSXT Supp. Reply WP “Yard & Support Job Comparison\_Supplemental (CSXT 2010 Ops).xlsx.”

<sup>36</sup> TPI Supp. at III-C-9. See also TPI Reb. at III-C-132 (“according to CSXT’s Reply evidence the TPIRR classifies less than {{ }} percent of the actual cars CSXT classified in hump yards in 2010 and less than {{ }} percent of the actual cars CSXT classified in 2013.”).

<sup>37</sup> See TPI Reb. at III-C-132 and Table III-C-1 (dividing 11,575 cars classified in “CSXT Reply” by 13,698 cars classified by CSXT during 2010).



and departed on Train Q536 for movement to {{ }} on February 5, 2013. The car arrived at {{ }} on Train Q536 on February 6, 2013, and was classified into Train Q514 (“Classification On”) for movement to {{ }}. The data indicate that Train Q514 departed {{ }} on February 7, 2013 and arrived in {{ }} later on that date. The car was delivered (“Industry Place”) to the customer facility by Train Y120 later on February 7, 2013. TPI’s computer program captured the receipt of the car in interchange at {{ }} by Train Q536, the “Classification Off” Train Q536 at {{ }}, and the “Classification On” Train Q514 at {{ }}. However, TPI’s program did not capture the “Industry Place[ment]” by Train Y120 at {{ }} (Sequence Number 27).

Likewise, Exhibit 2 depicts the car event sequence for a car received by CSXT in interchange at {{ }} and moving to a destination industry at {{ }}. The data indicate that the car was “Interchange Received” at {{ }} on March 21, 2012 and departed {{ }} on Train Q649 for movement to {{ }} on March 23, 2012. The car arrived at {{ }} on Train Q649 on March 24, 2012 and was classified into Train Y191 for delivery to a nearby customer. The data indicate that Train Y191 delivered the car (“Industry Place”) at 10:55 on March 26, 2012. TPI’s computer program captured the receipt of the car in interchange at {{ }} and the placement of the car into Train Q649 at {{ }}. However, TPI’s program failed to capture the placement of the car at the destination industry by Train Y191 (Sequence Number 12).

CSXT’s review of TPI’s computer programming instructions discovered that TPI also ignored classification events for which the “Suffix”<sup>40</sup> field was missing or recorded as

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<sup>40</sup> The “Suffix” field identifies the date and time at which each train involved in handling a particular car originated. For example, on Exhibit 3, the Suffix “20121102” for Train Q504 indicates that Train Q504 originated on November 2, 2012. The Suffix for each train remains the

“UNKNOWN.”<sup>41</sup> For example, Exhibit 3 depicts the car event sequence for a car received by CSXT in interchange at {{ }} and moving to a destination industry at {{ }}. The data show that the car was “Interchange Received” at {{ }} on November 1, 2012. Because the “Suffix” for the next classification event (the “Classification Off” Train Y220 at {{ }}) was recorded as “UNKNOWN,” TPI’s program did not account for that yard handling event involving Train Y220 (Sequence Number 10).

Likewise, as Exhibit 4 shows, TPI’s faulty computer programming caused it to miss a classification event solely because the “Suffix” for that event was listed as “UNKNOWN.” Exhibit 4 depicts the car event sequence for a car originated at a CSXT-served industry at {{ }} and forwarded in interchange to a connecting carrier at {{ }}. The data show that the car was picked up (“Industry Pull”) by Train J742 at the customer’s facility at 15:40 on July 25, 2012. Train J742 handled the car to {{ }}, where it was classified (“Classification On”) into Train Q556 for movement to {{ }} at 11:54 on July 26, 2012. The event data trace the movement of the car through {{ }}. While TPI’s program captured the initial pick-up of the car at {{ }} and several of the classification events along the car’s route of movement, it did not capture the switching of the car off Train R069 at {{ }}, on July 27, 2012 (Sequence Number 51), because the “Suffix” for that classification event appears as “UNKNOWN” in the CSXT car event data.

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same as it travels along the network. By contrast, the “Timestamp” field on Exhibit 3 identifies the date and time at which each event associated with a car occurred.

<sup>41</sup> See TPI Op. WP “Inter Train Switching.sql.” Line 19 contains the programming step that excludes from TPI’s classification counts any record where the TrainSuffix field equals “UNKNOWN.”

CSXT's review of the data indicates that TPI's failure to capture car events with an "UNKNOWN" Suffix alone resulted in an understatement of yard classification counts of at least ten percent.<sup>42</sup>

As these examples illustrate, TPI's faulty computer programming failed to capture many instances in which the CSXT car event data indicated that TPIRR's selected traffic would need to be switched or handled at a TPIRR yard. A comparison of TPI's Base Year car classification count (12,924 cars/day at TPIRR hump yards) and CSXT's actual 2013 car classifications at those locations (15,729 cars/day) suggests that the understatement of classification events in TPI's Rebuttal yard staffing analysis is substantial. The 12,924 classification events posited by TPI represent only 82% of the car classifications actually performed by CSXT during 2013 at the hump yards replicated by TPIRR.<sup>43</sup> TPI has failed to proffer a credible explanation as to how TPIRR could apply CSXT's real-world car classification and blocking plan to a merchandise traffic group consisting of 93% of CSXT's historical traffic with nearly 20 percent fewer yard assignments. Indeed, because TPI selected virtually 100% of the carload traffic moving to and from TPIRR-served customers, the number of car handlings at TPIRR serving yards, in all likelihood, would come close to 100% of the number of classifications actually performed by CSXT.

Fourth, TPI's "Scenario #1" yard train evidence continues to assign no yard crews or locomotives to several locations at which TPIRR would clearly need to transfer cars between serving yards and customer facilities. For example, TPI's Rebuttal (and "Scenario #1") do not

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<sup>42</sup> See CSXT Supp. Reply WP "Classification\_Comparison.xlsx."

<sup>43</sup> While TPI's Base Year calculations cover a somewhat different time period (July 1, 2012 through June 30, 2013) than the CSXT 2013 data, those time periods overlap substantially. Accordingly, the CSXT 2013 data provide a reasonable basis for comparing TPI's computer-generated Base Year car classification estimate to CSXT's real-world experience.

provide for any yard trains at Winston, FL.<sup>44</sup> As CSXT demonstrated on Reply, this omission left TPIRR without any yard crews to perform the work done by CSXT's historical Train Y110, which delivers TPI's "issue" traffic to a customer at Galloway, FL.<sup>45</sup> On Rebuttal, TPI acknowledged that "this particular Train Y110 operated, as CSXT describes, from Winston, FL along a route that included Lakeland, Griffin, and Galloway, FL."<sup>46</sup> TPI also estimated that TPIRR would need to classify an average of 35 cars per day at Winston.<sup>47</sup> Moreover, in compiling the list of 25,119 "Y" trains submitted in connection with its "Scenario #2" operating plan, TPI identified 489 "Y" trains (approximately 1.3 per day) that operated at Winston, FL during the Base Year.<sup>48</sup> Yet, TPI's "Scenario #1" operating plan continues to assign "0" yard trains at Winston. TPI's "Scenario #1" (by its own admission) fails to provide all of the necessary train service for the "issue" traffic.

TPI's "Scenario #1" also continues to assign no yard crews at Grafton, WV, even though TPIRR would (according to TPI) need to classify 92 cars per day at that location.<sup>49</sup> Likewise, "Scenario #1" provides no yard staffing at Dayton, OH, where TPIRR would (based on TPI's calculations) classify 72 cars per day, Danville, IL (56 classifications per day) or Terre Haute, IN

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<sup>44</sup> See TPI Supp. WP "Yard & Support Job Comparison\_Supplement.xlsx," Line 37, Column 11.

<sup>45</sup> See CSXT Reply at III-C-27 to III-C-28.

<sup>46</sup> See TPI Reb at III-C-63.

<sup>47</sup> See TPI Supp. WP "Yard & Support Job Comparison\_Supplement.xlsx," Line 37, Column 8.

<sup>48</sup> See TPI Supp. WP "Y tm 1 on with miles\_Statistics.xlsx," Tab "Home Station Stats." CSXT's MultiRail analysis likewise identified nine weekly Y trains (or 1.3 per day) needed to provide first mile/last mile train service in and around Winston, FL. See CSXT Supp. WP "Supplemental RTC Ind Yard Trains.xlsx," Tab "Ref\_Payroll," lines 18 and 34.

<sup>49</sup> See TPI Supp. WP "Yard & Support Job Comparison\_Supplement.xlsx," Line 80, Columns 10 and 11.

(51 daily classifications).<sup>50</sup> Tellingly, TPI's Supplemental "Scenario #2" train list includes 116 annual "Y" trains to serve customer locations in and around Dayton, 102 annual "Y" trains at Terre Haute, and one "Y" train serving Danville.<sup>51</sup> In short, TPI's "Scenario #1" fails to provide sufficient yard staffing to enable TPIRR to perform the required in-yard switching activities—much less to complete the movement of cars between yards and customer facilities.

Finally, TPI appears to suggest that its "Scenario #1" (*i.e.*, its Rebuttal yard train list) actually did account for all of the industrial yard trains belatedly identified by TPI in its Supplemental Evidence. TPI explains that the 25,119 industrial yard trains included in its "Scenario #2" and "Scenario #3" train lists constitute 16% of the total yard jobs in TPI's Supplemental Evidence, approximately the same percentage of CSXT system-wide "Y" trains that operated outside the yard (based on data produced in discovery).<sup>52</sup> TPI then asserts that:

Notably, not only has TPI included "Y" trains operating outside yards in its Rebuttal evidence, but the ratio of TPIRR "Y" trains leaving yards to total TPIRR "Y" trains matches the 15 percent of "Y" trains leaving CSXT yards in CSXT's discovery file 'Yard Crew Size and Starts.xls'.<sup>53</sup>

To the extent that this statement is intended to suggest that TPI's "Scenario #1" actually accounted for 25,119 "industrial yard trains" (*i.e.*, "Y" trains that operate beyond the yard), it is demonstrably false.

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<sup>50</sup> See TPI Supp. WP "Yard & Support Job Comparison\_Supplement.xlsx," Line 74, Columns 10 and 11, Line 71, Columns 10 and 11 Line 72, Columns 10 and 11.

<sup>51</sup> See TPI Supp. WP "Y trn 1 on with miles\_Statistics.xlsx," Tab "Home Station Stats," Rows 42, 47 and 99.

<sup>52</sup> See TPI Supp. at III-C-17 to III-C-18, Table III-C-1.

<sup>53</sup> See TPI Supp. at III-C-17 (emphasis added).

**FIGURE 2**  
**SARR Daily Yard Jobs**

	<b>CSXT</b>	<b>TPI</b>	<b>Difference</b>
Total Yard Jobs	506	409	(97)
Industrial “Y” Trains	65*	69**	4
“Y” Trains Performing In-Yard Switching	440	340	(100)

\* CSXT daily industrial yard trains based on 23,868 trains identified in CSXT Supplemental Evidence (23,868 ÷ 365 = 65.39)

\*\* TPI daily industrial yard trains based on 25,119 trains identified in TPI Supplemental Evidence (25,119 ÷ 365 = 68.82).

As Figure 2 shows, the 25,119 annual industrial “Y” trains identified in TPI’s Supplemental Evidence represent an average of 69 industrial yard trains per day. If, in fact, the 409 daily yard assignments in TPI’s Rebuttal included 69 daily “industrial” yard trains, TPIRR would be left with only 340 yard assignments—100 fewer than CSXT employed in its real-world operations—to perform the required in-yard switching at all TPIRR yards.<sup>54</sup> TPI has not proffered any evidence to support the notion that TPIRR could execute CSXT’s real-world car classification and blocking plan with 100 fewer yard crews. Such a suggestion is, on its face, not credible. Indeed, as Figure 2 shows, the 409 total yard crews accounted for by TPI on Rebuttal are not sufficient to perform all of the required in-yard switching, much less provide daily service between TPIRR yards and customer facilities performed by industrial yard trains.

## **2. Other Local Trains.**

In addition to its failure to account for “industrial yard trains,” TPI’s Opening train list omitted 5,940 historical local trains that serve both on-SARR and off-SARR points and 9,894 other local trains that provide critical first mile/last mile service. CSXT demonstrated that those local trains were necessary to enable TPIRR to provide the same train service as CSXT (as

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<sup>54</sup> Indeed, as Figure 2 shows, the total number of yard assignments posited by TPI on Rebuttal is less than the number employed by CSXT to perform in-yards switching activities.

posited by TPI).<sup>55</sup> On Rebuttal, TPI added to its train list the 5,940 “On/Off SARR local trains” and 5,433 of the 9,894 other missing local trains, but continued to exclude 4,461 of the local trains identified by CSXT on Reply.<sup>56</sup>

TPI proffered no persuasive rationale for excluding the remaining 4,461 historical local trains from its Rebuttal train list. TPI “accept[ed] the premise that [local switcher] trains do operate on the CSXT system and that they enhance the efficiency of the network.”<sup>57</sup> Yet it continued to exclude 3,233 (or 63%) of the 5,302 missing local trains identified by CSXT on Reply.<sup>58</sup> (Inexplicably, TPI added only those local switcher trains to which CSXT’s MultiRail analysis had assigned “0” cars, and continued to exclude “switcher” trains to which cars had been assigned by MultiRail.) Likewise, TPI selectively added only 474 of 1,702 other local trains that it had excluded for “unknown reasons” on Opening.<sup>59</sup>

In its Supplemental narrative, TPI once again insists that “[its] Rebuttal local train list contains all of the local trains that are needed to deliver and/or pick-up the TPIRR traffic.”<sup>60</sup> TPI’s “Scenario #1” continues to exclude the 4,461 local trains identified by CSXT on Reply on

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<sup>55</sup> See CSXT Reply at III-C-16 to III-C-26, III-C-31 to III-C-35.

<sup>56</sup> See TPI Reb. at III-C-42, III-C-74 to III-C-78.

<sup>57</sup> See *id.* at III-C-75.

<sup>58</sup> *Id.* As CSXT explained on Reply (at III-C-31 to III-C-33), CSXT operates local “switcher” trains that switch blocks of cars set-out by other CSXT road or local trains near customer facilities. This practice enhances efficiency by relieving road crews of responsibility for stopping to pick up and set off individual cars at customer facilities (reducing road train dwell time at intermediate locations and avoiding blocking the main line for an extended time while a road train performs local switching service). Likewise, switcher assignments enable other local trains to serve a greater number of stations during a single shift.

<sup>59</sup> See CSXT Reply at III-C-35; TPI Reb. at III-C-82.

<sup>60</sup> TPI Supp. at III-C-19.

the grounds that “CSXT has not provided a shred of evidence from its historic traffic data that these trains handled any of the TPIRR’s traffic.”<sup>61</sup>

As an initial matter, this assertion turns the applicable burden of proof on its head. It is TPI—not CSXT—that has the duty to demonstrate that its “Scenario #1” train list accounts for all of the trains needed to serve TPIRR customers. Nevertheless, the record contains more than sufficient information to confirm that those 4,461 local trains are required for TPIRR to provide the same train service as CSXT did during the Base Year.

As CSXT explained on Reply (at III-C-32 to III-C-33), the CSXT car event data generally do not associate a particular car with a train unless that train transports the car between two discrete reporting “stations.” Because the work performed by local switcher trains often occurs within the reporting limits of a single station, the event data do not associate those trains with all of the cars that they handle. However, in most cases, local trains that do not appear in the car event data can be corroborated by other data sources in the record.

Every one of the 4,461 disputed local trains is shown in either the car event data or the train sheet data as operating on the TPIRR network during the Base Year.<sup>62</sup> The car event data document the movement of 1,228 of those trains at points along the SARR—1,214 of those 1,228 trains (99%) appear in both the car event and the train sheet data. TPI omitted those trains only because of errors in its data processing. The train sheet data document the movement of all of the remaining 3,233 disputed local trains.<sup>63</sup> If the historical data indicate that those trains

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<sup>61</sup> *Id.* at III-C-20.

<sup>62</sup> See CSXT Reply WP “ExaminingTPITrains.xlsx” (identifying both the local trains that were subsequently added by TPI on Rebuttal as well as those 4,461 trains rejected by TPI from CSXT historical car event and/or train sheet data). See also CSXT Supp. Reply WP “ReviewingLocals\_Omitted\_TPI\_Rebuttal.xlsx.”

<sup>63</sup> See CSXT Supp. Reply WP “Reviewing Locals\_Omitted\_TPI\_Rebuttal.xlsx.”

actually operated along the TPIRR network during the Base Year, they are clearly needed to provide the “same” train service as CSXT regardless of whether the car event data associate specific selected cars with those trains. Indeed, given TPI’s selection of virtually 100% of the cars moving to or from TPIRR-served stations, any suggestion that a local train operating along the TPIRR system was carrying only non-selected traffic during the Base Year is simply not credible.<sup>64</sup>

Moreover, 2,480 (or 55%) of the 4,461 disputed local trains are explicitly identified in the CSXT train profiles as “switcher” trains.<sup>65</sup> As TPI was aware when preparing its Rebuttal Evidence, “switcher” trains cannot be identified solely by looking at the car event data, which do not consistently associate cars with trains that do not handle the cars between two reporting stations. However, any switcher train operating exclusively at TPIRR-served customer locations during the Base Year were necessarily involved in handling cars that are part of TPIRR’s selected traffic group.

Alternative record sources likewise confirm that the 1,981 disputed local trains that are not designated as “switcher” trains<sup>66</sup> operated over the TPIRR network during the Base Year.

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<sup>64</sup> TPI’s attempt to excuse its omission of those 4,461 trains on the grounds that CSXT described the car event data as containing “a ‘granular account’ of carload activities” (TPI Supp. at III-C-22) is disingenuous at best. While the car event data provide the greatest detail regarding the movement of cars along the CSXT network, CSXT has repeatedly made clear to TPI that the car event data may not identify the trains that participate in the movement of each car unless the train transports the car between two or more reporting stations.

<sup>65</sup> See CSXT Reply WP “Profiles1 Update.xlsx” (identifying the train type as “SW” or assigning a train name containing “SW”). For example, TPI continues to exclude 205 annual C519 trains, a switcher train servicing West Ashtabula, and 153 annual D789 “Brunswick Switcher” trains. See CSXT Supp. Reply WP “ReviewingLocals\_Omitted\_TPI\_Rebuttal.xlsx,” Tab “Switcher\_Trains.”

<sup>66</sup> 4,461 disputed local trains minus 2,480 explicitly identified in CSXT train profiles as switcher trains = 1,981.

Figure 3 identifies the station(s) or route of movement for the train symbols comprising 71% (more than 2/3) of those 1,981 trains.

**FIGURE 3<sup>67</sup>**  
Local Trains TPI Omitted on Rebuttal, Not Identified as Switch Trains

All Provide Service on TPI Network

<u>Symbol</u>	<u>Name 1/</u>	<u>Station / Route 1/</u>	<u>Trains</u>
{{			

}}

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<b>Total</b>		<b>1981</b>
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1/ Source – CSXT Reply WP “Profiles1\_Update.xlsx.”

As Figure 3 shows, all of these trains operate at stations or along routes that are within the TPIRR network. For example, TPI included 150 annual J709 {{ }} trains in its Rebuttal train list, but excluded 103 others that are documented in the train sheets. Further evidence that TPI should have included all of the J709 trains is provided by CSXT’s payroll data, which document 256 annual train starts for the J709.<sup>68</sup>

<sup>67</sup> See CSXT Supp. Reply WP “ReviewingLocals\_Omitted\_TPI\_Rebuttal.xlsx.”

<sup>68</sup> See CSXT Supp. WP “Yard Crew Size and Starts Update.xls,” Tab “Locals - South.”

\* \* \* \* \*

TPI made a strategic decision in this case to present a carload operating plan based on the premise that its SARR would operate “the same trains with the same consists as CSXT over the same routes and through the same yards in the same locations to serve the same customers as the real world CSXT.”<sup>69</sup> TPI also chose to assume that TPIRR would adopt—without change—CSXT’s real-world car classification and blocking plan.<sup>70</sup> Those litigation choices enabled TPI to avoid the time and effort required to develop train service and car classification plans for TPIRR from the ground up. However, they did not excuse TPI from the requirement that it account for all of the trains necessary to provide full service to the selected traffic group along the SARR.<sup>71</sup> Nor did they exempt TPI from the requirement that it “establish that the SARR could still adequately serve the traffic group” with less than the full complement of yard trains and crews utilized by CSXT in its real-world operations.<sup>72</sup> The Board’s *Supplemental Evidence Order* afforded TPI one final opportunity to satisfy those fundamental prerequisites for a “feasible” operating plan. TPI’s “Scenario #1”—which reprises its demonstrably deficient Rebuttal train list and yard staffing plan—utterly fails to satisfy the Board’s evidentiary standards. Therefore, TPI’s “Scenario #1” must be rejected.

**B. TPI’s “Scenario #2” Operating Evidence Is Seriously Flawed And Should Be Rejected.**

Although TPI stubbornly adheres to the fiction that its Rebuttal operating plan is feasible, it offers two alternative “Scenarios” for the Board’s consideration. In “Scenario #2,” TPI presents a list of 25,119 historical “Y” trains that it identified from CSXT’s historical event data,

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<sup>69</sup> TPI Reb. at III-C-7 (emphasis added).

<sup>70</sup> *Id.* at III-C-7, III-C-105.

<sup>71</sup> See *Supplemental Evidence Order* at 6 (citing *DuPont* at 38).

<sup>72</sup> *SunBelt* at 16.

and also adds to TPIRR's train list the 4,461 other local trains that TPI disputed on Rebuttal.<sup>73</sup>

"Scenario #3" is an alternate version of "Scenario #2" in which TPI removes the high-priority UPS and Threads Express intermodal traffic discussed in the Board's *Supplemental Evidence Order* (at 8). CSXT's Supplemental train list (and related RTC simulation) are superior to TPI's "Scenario #2" train list and RTC evidence.<sup>74</sup>

**1. TPI's Claim That Data In The Record Is Insufficient To Develop An Accurate Train List Is Without Merit.**

TPI prefaces its "Scenario #2" train list by claiming that the Board's request for supplemental "Y" train evidence "requires the parties to fit a square peg into a round hole."<sup>75</sup> TPI asserts that the CSXT data "is not well-suited for capturing the historic operations of 'Y' trains."<sup>76</sup> Specifically, TPI complains that CSXT's car event data do not reliably identify all CSXT yard trains that operate in TPIRR's service territory.<sup>77</sup> These assertions hew closely to TPI's statements on Rebuttal that the car event data were inadequate to enable it to identify CSXT's historical industrial yard trains.<sup>78</sup>

TPI's complaints about CSXT's event data ring hollow, given that TPI exhausted many pages on Opening arguing that the CSXT data "provide[ ] a solid foundation for developing a feasible operating plan" and that "TPI's use of CSXT historical data ensures that the SARR operations will reflect 'the full range of CSXT's operations.'"<sup>79</sup> TPI's Opening Exhibit III-C-1 went to lengths to downplay CSXT's warning regarding the limitations of certain CSXT data,

<sup>73</sup> See TPI Supp. at II-C-13 to III-C-18, III-C-23 to III-C-24.

<sup>74</sup> CSXT responds to TPI's "Scenario #3" in Part C below.

<sup>75</sup> TPI Supp. at III-C-5.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at III-C-7 to III-C-8.

<sup>78</sup> TPI Reb. at III-C-63.

<sup>79</sup> TPI Op. Ex. III-C-1 at 3, 6.

and TPI asserted that it had more than enough data to develop a complete operating plan. In its Supplemental Evidence, TPI changes course and claims that it did not have the data necessary to develop a comprehensive industrial yard train list. TPI's assertions regarding the adequacy of record data to identify the necessary "Y" trains are overblown, for several reasons.

As an initial matter, notwithstanding the difficulties that it supposedly encountered, TPI was, in fact, able to identify at least 25,119 "industrial yard trains" that operated in TPIRR's service territory during the Base Year. While (as CSXT demonstrates below) TPI's list of industrial "Y" trains is flawed in certain respects, TPI did successfully identify the vast majority of such trains that TPIRR would need to operate. Thus, TPI's Supplemental Evidence refutes the notion that developing a complete roster of "Y" trains based on the record data was an insurmountable task. It also exposes TPI's assertion that "[it] could not possibly have included these trains [in its Opening and Rebuttal operating plans] because CSXT conjured them from thin air" (TPI Reb. at III-C-4) as demonstrably incorrect.

In reality, TPI had more than enough data sources from which to develop an accurate list of industrial yard trains. As TPI acknowledges (TPI Supp. at III-C-8), CSXT cautioned it during discovery that the car event data do not identify car handlings within a single station.<sup>80</sup> On Reply (at III-C-32 to III-C-33), CSXT explained again that TPI could not rely solely upon the car event data to identify all of the car handlings that TPIRR would be required to perform. However, CSXT advised TPI that alternative data sources could provide the information necessary to develop an accurate TPIRR "Y" train list.<sup>81</sup>

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<sup>80</sup> See Letter from M. Warren to J. Moreno at 9 (Oct. 11, 2013).

<sup>81</sup> *Id.*

For example, CSXT's payroll records (which were furnished to TPI in discovery) document the industrial yard trains that actually operated from the yards replicated by TPIRR.<sup>82</sup> The CSXT payroll data identify, by home terminal, the local and industrial yard train symbols that operated from each location, and the number of actual train starts for each train symbol during the second quarter of 2013 (the final quarter of TPI's Base Year). CSXT's train sheet data (which cover the entire Base Year) offered an additional source of information to document the operation of industrial yard trains during the Base Year.<sup>83</sup> The vast majority of the industrial yard trains that CSXT operated during the Base Year are reflected in both the payroll records and the Train Sheet data.<sup>84</sup> Additional detail regarding the locations and routes served by CSXT industrial yard trains is available in the Train Profiles furnished to TPI in discovery.<sup>85</sup> In preparing its Supplemental Evidence, CSXT consulted those historical data sources to confirm the real-world operation of the industrial yard trains included in its Supplemental Train List.<sup>86</sup> TPI could have utilized those sources in the first instance on Opening (or Rebuttal) to develop an accurate list of "Y" trains based on CSXT's historical operations. TPI cannot be excused from

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<sup>82</sup> See CSXT Reply WP "Yard Crew Size and Starts Update.xls" and CSXT Supp. WP "Supplemental RTC Local Trains.xlsx."

<sup>83</sup> See TPI Op. WP "TPI FILE19.TXT" and similarly-named Train Sheet files that CSXT produced to TPI in discovery.

<sup>84</sup> The CSXT payroll data cover the period from April 1, 2013 through June 30, 2013. The Train sheet data cover the entire Base Year (July 1, 2012 through June 30, 2013). The fact that some industrial yard trains are reported in one source but not the other is attributable to the difference in the time periods covered by the two data sources. However, the identification of any particular "Y" train in either the payroll records or the train sheet data demonstrates that CSXT actually operated that train.

<sup>85</sup> See CSXT WP "III-C-/Yard Jobs\_Serving\_OnSARR/CSXT\_TrainProfiles\_Discovery" (describing the work performed by 88 of the 92 industrial yard train symbols included in CSXT's Reply train service plan).

<sup>86</sup> See CSXT Supp. at 11-14. See also CSXT Supp. WP "Supplemental RTC Ind Yard Trains.xlsx," Tab "Ref\_Payroll."

developing and accounting for an accurate industrial yard train list when it had all of the data necessary to do so.

**2. TPI’s “Scenario #2” “Y” Train List Is Inaccurate.**

TPI’s “Scenario #2” train list contemplates the operation of 25,119 “industrial yard trains” (*i.e.*, “Y” trains that operate outside the yard) by TPIRR during the Base Year. While the number of industrial yard trains included in TPI’s “Scenario #2” is certainly more realistic than the nonsensically small number of yard assignments provided for in its Rebuttal Evidence, the methodology that TPI applied was flawed, leading it to develop a Supplemental “Y” train list that does not accurately reflect the “Y” trains that are needed to serve TPIRR’s customers.

TPI describes its methodology as follows:

[I]n compiling TPI’s Supplemental/Compliance list of ‘Y’ trains that ‘deliver and/or pick up SARR traffic at shipper locations in the base year,’ TPI included all ‘Y’ trains that met the following criteria: all ‘Y’ trains to which the car event data associated any shipments that traveled more than 0.0 miles on the train, and for which either the ‘from’ or ‘to’ location associated with that ‘Y’ train movement segment was physically located on the TPIRR.<sup>87</sup>

As TPI itself states, this methodology captured “the movement of all carloads over any distance to or from any location on the SARR on any ‘Y’ train regardless of whether the traffic belonged to a TPIRR customer.”<sup>88</sup> In other words, TPI’s computer program was designed to select every “Y” train that physically moved more than 0.0 miles on any line in the TPIRR network, without regard to the identity of the cars moving on the train.

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<sup>87</sup> TPI Supp. at III-C-13 to III-C-14.

<sup>88</sup> *Id.* at III-C-14 (emphasis in original).

CSXT’s review of TPI’s Supplemental “Y” train analysis revealed that TPI included “Y” trains that operate at 15 locations entirely off-SARR.<sup>89</sup> Specifically, CSXT reviewed the Train Profiles that TPI used to identify the stations served, and found that nearly 1,800 of the “Y” trains selected by TPI never touched the SARR. This is apparently the result of a programming flaw whereby TPI overrode the actual yard train location(s) with other waybill location identifiers. Figure 4 identifies the locations (and number of trains) that should not have been included in TPI’s Supplemental “Y” train list.<sup>90</sup>

**FIGURE 4**

Serving Yard	# of Trains
WALBRIDGE, OH	286
EAST SAVANNAH, GA	238
CHARLESTON, SC	160
PORT NEWARK E I, NJ	142
NY OAK POINT, NY	134
PHILADELPHIA, PA	116
DETROIT, MI	107
NEWARK, NJ	95
SOUTH AMBOY, NJ	80
PORT READING, NJ	79
COLUMBIA, SC	79
PORT HURON, MI	74
NORTH BERGEN, NJ	70
DETROIT NORTH YD, MI	68
WILMINGTON, NC	58
<b>TOTAL</b>	<b>1786</b>

When those 1,786 off-SARR industrial yard trains are removed from TPI’s list, the number of industrial yard trains in TPI’s “Scenario #2” operating plan is reduced from 25,119 trains to 23,333 industrial yard trains—only slightly below the 23,868 industrial yard trains identified by CSXT in its Supplemental Evidence.

<sup>89</sup> See TPI Supp. WP “Y trn 1 on with miles.xlsx” and “Y trn 1 on with miles\_Statistics.xlsx,” Tab “Home Station Stats.”

<sup>90</sup> See TPI Supp. WP “Y trn 1 on with miles\_Statistics.xlsx,” Tab “Home Station Stats.”

In contrast to TPI’s crude “Y” train selection methodology, CSXT’s Supplemental “Y” train list and RTC simulation are based on an analysis of the specific trains required to transport TPIRR’s selected traffic. As the trip plans submitted by CSXT in connection with its Reply and Supplemental Evidence illustrate, CSXT’s operating plan accounts for the complete movement of each selected car from its origin (or on-SARR junction) to its destination (or off-SARR junction). TPI has proffered no evidence to demonstrate that its operating plan achieves that result—to the contrary, TPI explicitly acknowledges that its “Scenario #2” analysis made no effort whatsoever to ascertain whether the cars moving on the “Y” trains included in its list were TPIRR cars. Accordingly, CSXT’s train and yard service plans constitute the only reliable evidence of record, and should be adopted by the Board as the basis for decision in this case.

**3. TPI’s Adjustment To Its Rebuttal Yard Matrix To Eliminate A Purported “Double-Count” In “Y” Train Operating Expenses Results In A Massive Understatement Of TPIRR’s Yard Crew And Locomotive Expenses.**

Having (belatedly) identified more than 25,000 “industrial yard trains” that are needed to provide complete train service for TPIRR’s selected traffic, and developed operating expenses for those trains based on TPI’s Supplemental RTC simulation, TPI subtracted those costs from the yard crew and locomotive expenses set forth in its Rebuttal Evidence in order to eliminate a supposed “double-count” in those expenses. TPI explains the rationale for that adjustment as follows:

Both parties have declared to the Board that their respective yard jobs matrices account for all yard train work, both within and without the yard. . . . Therefore, by definition, adding a list of Supplemental/Compliance industrial yard trains would double count operating expenses. . . .

Because both parties already have accounted for ‘Y’ train operating costs in this other part of their evidence, the addition of ‘Y’ trains to their supplemental evidence train lists will double-count ‘Y’ train operating expenses. Therefore, it is necessary to

adjust the yard jobs matrices to remove the double-counted ‘Y’ trains.<sup>91</sup>

Although this rationale for adjusting yard operating expenses to offset operating expenses for industrial yard trains developed on the basis of the RTC simulation is valid in theory, TPI’s proposed adjustment results in a massive understatement of TPIRR’s yard crew and locomotive requirements because, TPI did not, in fact, account for 25,119 industrial yard trains in its Rebuttal Evidence.

As Figure 2 (on page 19 above) shows, the 25,119 annual industrial “Y” trains that TPI now claims it accounted for in its Rebuttal Evidence would represent an average of 69 industrial yard train starts per day. With only 409 total daily yard assignments accounted for in TPI’s Rebuttal Evidence, TPIRR would be left with only 340 assignments to perform all required in-yard switching at TPIRR yards—100 fewer daily in-yard assignments than CSXT employed in its real-world operations. TPI never argued—much less presented evidence to prove—that TPIRR could execute a car classification and blocking plan based on CSXT’s actual operations with only 340 yard crews. Indeed, as Figure 2 shows, the 409 total yard crews accounted for by TPI on Rebuttal are 31 crews short of the number required to perform in-yard switching at TPIRR yards. Based upon the evidence of record, TPI’s assertion that the operating expenses associated with 25,119 industrial yard trains must be subtracted from its Rebuttal yard expense calculations in order to prevent a “double-count” is nonsensical and must be rejected.<sup>92</sup>

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<sup>91</sup> See TPI Supp. at III-C-14 to III-C-15.

<sup>92</sup>The adjustment proposed by TPI results in the same count of total TPIRR daily yard jobs (409) that TPI posited in its “Scenario #1.” Thus, in substance, TPI’s “Scenario #2” yard service plan suffers from the same fundamental deficiency as “Scenario #1”—*i.e.*, they both fail to satisfy the evidentiary standards with respect to SARR train service and yard service articulated in *DuPont* and *SunBelt*, respectively.

#### 4. TPI Miscalculated Operating Statistics Resulting In Understated Operating Expenses.

TPI's Scenario 2 miscalculated two operating statistics: (1) the peaking factor; and (2) locomotive unit miles for yard engines. Each miscalculation resulted in understated TPIRR operating expenses.

*Peaking Factor:* The peaking factor is used to account for the additional locomotives and freight cars that would be necessary to handle the higher train volumes that the SARR would move in the busiest week of the year. In its Opening and Rebuttal Evidence, TPI calculated a peaking factor of 5%, reflecting the fact that the TPIRR moved 5% more trains in the peak week than in the average week.<sup>93</sup> Review of TPI's Base Year train list indicates that the number of road and unit trains operated in the peak week was 5% above average, while the number of local trains operated was 6% above average, producing an overall average of 5%.<sup>94</sup> In "Scenario #2", TPI reduced its peaking factor based upon an erroneous conclusion that the number of industrial yard trains that moved in that peak week was below average. TPI then exacerbated this error by improperly concluding that a below-average number of industrial yard trains could have an offsetting effect on the peaking factor used to ensure that the SARR had sufficient road engines available to power the road trains operating across the network.

The first error in TPI's calculation is its determination that the SARR would operate only 430 of the 25,119 industrial yard trains in the peak week. TPI Supp. Table III-C-2.<sup>95</sup> In fact, TPI's workpaper shows that there were 485 "Y" trains that operated in the peak week.<sup>96</sup> When

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<sup>93</sup> TPI Op. at III-C-18.

<sup>94</sup> See, e.g., TPI Op. WP "TPIRR Base Year Local Train List v2\_Statistics.xlsx."

<sup>95</sup> See TPI Supp. at III-C-35 to III-C-36.

<sup>96</sup> See TPI Supp. WP "Y trn 1 on with miles.xlsx."

this error is corrected, the results indicate that, rather than operate 11% fewer than average industrial yard trains in the peak week, the TPIRR moved more than the average count.<sup>97</sup>

Even if TPI's calculation were correct (and it is not), its claim that fewer industrial yard trains in the peak week would result in the SARR needing to acquire fewer road engines is nonsensical. The SARR's industrial yard trains are powered by SD40 units. The road and unit trains are powered by high-horsepower ES44AC engines.<sup>98</sup> It is not feasible to assume that the SARR's need for ES44AC units to power road and unit trains has any correlation to the number of SD40 units available in the peak week. SD40 locomotives cannot sufficiently power the SARR's road and unit trains and cannot maintain the level of service that CSXT provides in the real world for these same trains. Moreover, TPI itself has specified that SD40 locomotives would operate solely within the yard and that a distinct pool of ES44AC locomotives would be used to power road and unit trains.<sup>99</sup> The number of industrial yard trains that operate in the peak week, therefore, cannot have any impact upon the number of ES44AC locomotives that are required to meet the SARR's needs during the busiest week of the year.

Furthermore, there is no reason why—based upon TPI's own methodology—TPI's calculation of its industrial yard train peaking-factor would change between its "Scenarios." TPI claims that it did not add any yard trains to Scenarios #2 and #3, but simply "reassign[ed]" Y trains leaving yards from its yard jobs evidence to its supplemental train list.<sup>100</sup> TPI claims that this methodology resulted in "double-counted Y trains," which subsequently required TPI to

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<sup>97</sup> See TPI Supp. WP "Y trn 1 on with miles.xlsx." 485 industrial trains in the peak week is an average of 69.3 per day, which is 1% higher than the annual average of 68.8 per day (25,119/365).  $69.3/68.8=1.007$ .

<sup>98</sup> See TPI Supp. WPs "TPI Scenario2 v2B Train Inputs\_Supplemental.xlsx" and "TPI Scenario3 v11 Train Inputs\_Supplemental\_v2.xlsx."

<sup>99</sup> TPI Suppl. WP "TPIRR Operating Expense\_Rebuttal\_Supplemental.xlsx."

<sup>100</sup> See TPI Supp. at III-C-38.

make offsetting adjustments to its operating statistics and operating expenses.<sup>101</sup> One of its offsetting adjustments was to reduce the number of daily TPIRR yard jobs (and corresponding number of locomotives) by 68.8, which amounts to the average daily count of yard jobs needed to serve the 25,119 industrial yard trains TPI identified.<sup>102</sup> This methodology is faulty. Simply reassigning yard jobs from one category to another does not result in a double-count, and certainly does not result in a necessary recalculation of the peaking factor. TPI's re-classification of yard jobs does not change the overall total number of locomotives that would be required to perform that work.

*Locomotive Unit Miles for Yard Engines:* In its Opening and Rebuttal Evidence, TPI calculated the number of locomotive unit-miles associated with yard engines based on a standard assumption that the locomotives would operate at 6 miles per hour over an 8-hour shift.<sup>103</sup> In "Scenario #2", TPI's RTC simulation models industrial yard trains that have two or three locomotives, resulting in an overall average of 1.07 units per train.<sup>104</sup> When calculating the SARR's total unit-miles, however, TPI did not use the figure from the RTC model, but instead assumed 1.00 locomotives per industrial yard train.<sup>105</sup> This results in an understatement of the

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<sup>101</sup> See, e.g., TPI Suppl. Evid. at III-C-14 to 18, III-C-37 to 39, Supplemental Tables III-C-3, III-C-4, and III-C-5 ("When the 25,119 double-counted 'Y' trains that leave yards are removed from yard jobs, however, the locomotive count for SD-40 locomotives decreases by 23.").

<sup>102</sup> The formula in cell K31 in TPI Suppl. WPs "TPIRR Operating Statistics\_Rebuttal\_Supplemental.xlsx" and "TPIRR Operating Statistics\_Rebuttal\_Supplemental v2.xlsx" removes the 23 SD40-2 locomotives that are associated with the 68.8 double-counted daily yard jobs, as calculated in cell AD106 in TPI Suppl. WPs "TPIRR Yard Operations\_Rebuttal\_Supplemental.xlsx" and "TPIRR Yard Operations\_Rebuttal\_Supplemental v2.xlsx."

<sup>103</sup> See TPI Reb. WP "TPIRR Yard Operations\_Rebuttal.xlsx," Tab "Sheet1," Cell AI105.

<sup>104</sup> See TPI Suppl. WPs "TPI Scenario2 v2B Train Inputs\_Supplemental.xlsx" and "TPI Scenario3 v11 Train Inputs\_Supplemental\_v2.xlsx."

<sup>105</sup> See TPI Suppl. WPs "Y trn 1 on with miles\_Statistics.xlsx" and "Y trn 1 on with miles\_Statistics v2.xlsx," Tab "Home Station Stats," columns D and N.

locomotive unit-miles required to operate the TPIRR—and as a result understates the SARR’s fuel and locomotive servicing expenses associated with yard engines.

**C. CSXT’s Supplemental Train List And RTC Simulation Are Superior To TPI’s “Scenario #3” Train List And RTC Simulation.**

TPI’s “Scenario #3” is identical to “Scenario #2,” with one exception—“Scenario #3” removes from TPIRR’s operating plan the high-priority UPS and Threads Express intermodal traffic discussed in Part D below. While that adjustment represents an improvement over TPI’s “Scenario #2,” “Scenario #3” suffers from the same defects as “Scenario #2,” including the flaws in TPI’s process for identifying “Y” trains and its “double-count” adjustment that leaves TPIRR with far too few yard crews and locomotives. “Scenario #3” also contains additional errors that resulted in understated operating expenses. Despite indicating that this traffic accounted for \$10-21 million in annual SARR revenues,<sup>106</sup> TPI concluded that removing this traffic would have virtually no effect on the SARR’s overall profitability, as the net present value of the SARR’s overpayments is, according to TPI, virtually unchanged.<sup>107</sup> This outcome is in large part a function of three errors that TPI committed when calculating the SARR’s operating expenses related to: (1) the number of trains; and (2) intermodal lift and ramp costs; and (3) loss and damage costs.

*Number of Trains:* In order to calculate the SARR’s operating expenses after excluding the high-priority UPS and Threads Express traffic, TPI eliminated entirely the costs of the trains that carried those shipments. As a result, TPI determined that the “Scenario #3” TPIRR would require fewer locomotives, fewer train crews, and fewer locomotive unit-miles than its “Scenario

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<sup>106</sup> See TPI Supp. Table III-A-1.

<sup>107</sup> Compare TPI Supp. Tables III-G-2 and III-G-3, showing \$5.20 billion in overpayments for Scenario #2 and \$5.20 billion in overpayments for Scenario #3.

#2” counterpart.<sup>108</sup> Review of the supplemental simulations confirms that TPI eliminated those trains from its RTC analysis as well.<sup>109</sup> However, TPI failed to appreciate that other shipments travel on those trains—shipments for which TPI continues to claim SARR revenue. TPI cannot eliminate the cost of entire trains while all the while claiming SARR revenue for those very same trains. This error occurred despite the fact that TPI acknowledges that “the trains that handle this traffic are not dedicated to just that traffic. Because CSXT has removed just the UPS and Threads Express traffic from these trains, the TPIRR still must operate those trains at essentially the same cost but for substantially less revenue.”<sup>110</sup>

Irrespective of this statement, TPI did precisely the opposite when it came to the SARR operating plan and expenses. TPI failed to present any alternative train plan for the other shipments that it assumes the TPIRR would continue to handle. And TPI failed to account for the operating costs associated with those shipments. In order for TPI to continue to claim revenue for these shipments, its inexplicable exclusion of the trains should be rejected, and its “Scenario #3” operating expenses must include the corresponding costs of the locomotives and crews necessary to operate those trains.

*Intermodal Lift and Ramp Costs:* TPI overstated the intermodal lift and ramp costs associated with the high-priority UPS and Threads Express traffic. This error resulted in an understatement of TPIRR operating expenses for its “Scenario #3.” Review of TPI’s workpapers indicates that rather than identify the costs of performing lifts for only the UPS and Threads Express traffic, TPI included in its analysis the traffic for all customers that had shipments on the

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<sup>108</sup> See TPI Supp. at III-C-37 to 40, Supplemental Tables III-C-4 and III-C-5.

<sup>109</sup> See TPI Supp. WPs “TPI Scenario 2 REPORT\_Supplemental\_Op Stats.xlsx” and “TPI Scenario 3 REPORT\_Supplemental\_v2\_Op Stats.xlsx.”

<sup>110</sup> See TPI Supp. at III-C-27.

same lanes as the UPS and Threads Express traffic. Specifically, TPI identified roughly {{ }} containers of high-priority UPS and Threads Express traffic in the base year, yet reduced its operating expenses based upon the costs associated with {{ }} containers—nearly three times as many as were properly attributed to the UPS and Threads Express traffic.<sup>111</sup> As TPI continues to claim SARR revenues in “Scenario #3” for these non-UPS and Threads Express shipments, it must include the costs associated with handling those shipments in its operating expenses.<sup>112</sup>

*Loss and Damage:* TPI also overstated the loss and damage costs associated with the high-priority UPS and Threads Express traffic, which further contributed to the understatement of TPIRR operating expenses for its “Scenario #3”. As it did for the intermodal lift and ramp expenses, TPI excluded the loss and damage costs for a broader group of shipments than the UPS and Threads Express traffic alone.<sup>113</sup> Because TPI continues to claim SARR revenues in “Scenario #3” for these non-UPS and Threads Express shipments, it must also include the loss and damage costs associated with handling these shipments.<sup>114</sup>

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<sup>111</sup> See TPI Supp. Table III-A-1 and WP “COMPARE\_OD\_HP\_IM\_2012\_REB\_SUPP\_v2.xlsx,” Tab “2012\_HP\_IM\_TRAFFIC,” Columns Q and AC.

<sup>112</sup> In reviewing the treatment of this cost item, CSXT determined that it failed to reduce the SARR’s intermodal lift and ramp costs to account for the reductions associated with eliminating the high-priority UPS and Threads Express traffic for its Supplemental Evidence. CSXT submits with this Supplemental Reply Evidence a corrected version of its Supplemental workpaper, reducing annual expenses by \$0.8 million. See CSXT Supp. Reply WP “TPIRR Reply Intermodal Lift and Ramp (Suppl).xlsx.”

<sup>113</sup> See TPI Supp. WP “TPIRR FCD1 by STCC - 2010\_Rebuttal Supplemental v2.xlsx” Tab “TPIRR Portion,” Columns E to G.

<sup>114</sup> In reviewing the treatment of this cost item, CSXT determined that it also failed to reduce the SARR’s loss and damage costs to account for the reductions associated with eliminating the high-priority UPS and Threads Express traffic for its Supplemental Evidence. CSXT submits with this Supplemental Reply Evidence a corrected version of its Supplemental workpaper, reducing annual expenses by less than \$25,000. See CSXT Supp. Reply WP “TPIRR FCD1 by STCC - 2010\_Reply (Suppl).xlsx.”

For the reasons discussed above, CSXT’s Reply and Supplemental Evidence set forth the only “feasible” train service and yard service plans in the record, and should be adopted as the basis for decision in this case.<sup>115</sup>

**D. TPIRR Does Not Meet The Service Needs Of High-Priority Intermodal Traffic.**

TPI’s Supplemental Evidence defending its decision to include high-priority UPS and Threads Express traffic in TPIRR’s traffic group should be rejected. As CSXT showed on Reply, TPI proposes to handle this high-priority traffic by “leap-frogging” across four alternating segments of the residual CSXT and the SARR, thus creating three new interchanges. For example, CSXT’s Train Q031 operates from North Bergen, NJ, to Jacksonville, FL, in an efficient single-line movement well-suited to expedited service. TPI claims that those trains instead could be handled in (1) residual CSXT train service from North Bergen, NJ to Baltimore, MD followed by interchange to TPIRR; (2) TPIRR train service from Baltimore to Pembroke, NC, followed by interchange back to the residual CSXT; (3) residual CSXT train service from Pembroke to Folkston, GA, followed by yet another interchange back to TPIRR; and (4) TPIRR train service from Folkston to Jacksonville. TPI’s “leap-frogging” turns an efficient single-line train movement into one involving four segments and three interchanges.

TPI’s Supplemental Evidence provides no support for the proposition that its contemplated three-interchange service would be acceptable for this high-priority traffic, and the

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<sup>115</sup> In reviewing TPI’s calculation of other general and administrative expenses that are estimated on the basis of SARR revenues (*e.g.*, outsourced audit and legal expenses), CSXT determined that it failed to link properly its own similar calculations in its Supplemental Evidence. CSXT submits with this Supplemental Reply Evidence a corrected version of its Supplemental workpaper, which impact annual expenses by less than \$0.2 million. *See* CSXT Supp. Reply WPs “TPIRR G&A Outsourcing\_Reply (Suppl).xlsx,” “TPIRR Operating Expense\_Reply (Suppl).xlsx,” “TPIRR G&A Outsourcing\_Reply w UPS (Suppl).xlsx,” and “TPIRR Operating Expense\_Reply w UPS (Suppl).xlsx.”

traffic should therefore be excluded from the TPIRR traffic group. Because TPI failed to demonstrate that its SARR would provide the level of service that is required for these expedited shipments, CSXT removed the shipments from the SARR traffic group.<sup>116</sup>

The Board need only reach the question of whether high-priority UPS and Threads Express traffic can be presented in the SAC analysis if it first decides that “leapfrog” traffic is a permissible form of crossover movement. For the reasons CSXT explained in its Reply Evidence, leapfrog traffic inappropriately transforms the crossover traffic device from a simplifying assumption into a mechanism for evading costs and operational difficulties, and the Board should not allow it. *See* CSXT Reply at III-A-29 to III-A-37; CSXT Reply at III-C-36 to III-C-54. If the Board decides to prohibit leapfrog traffic, as it should, then leapfrog UPS and Threads Express traffic plainly must be excluded from the TPIRR traffic group.

Moreover, the evidence shows that “leap-frogging” high-priority UPS and Threads Express traffic in this case would substantially increase transit times and fail to meet the service needs of these customers. These shipments are among the highest priority shipments on the entire CSXT system, and transit times are of utmost importance in retaining the customer’s business. *See* CSXT Reply at III-A-9; CSXT Reply at III-C-40 to III-C-41. Indeed, TPI itself submitted an article in its Rebuttal describing an instance where UPS reduced rail traffic on CSXT in response to service problems that caused increased transit times.<sup>117</sup>

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<sup>116</sup> *See* CSXT Reply at III-A-8 to III-A-10, III-A-38, and III-C-196 to III-C-202.

<sup>117</sup> *See* TPI Reb. at III-A-6, n.11 (citing CSXT failures of service for certain United Parcel Service shipments in 1999, which resulted in CSXT losing much of the UPS business). TPI’s Rebuttal assertion that the article shows that transit times are not important to UPS is nonsense. On the contrary, the article quotes UPS as concluding that “[t]he problem is that [the railroads] are not making the trains run on time.” Earl Daniels, “UPS Lightens CSX’s Load,” *Florida Times-Union* (Aug. 27, 1999). ), [http://jacksonville.com/tu-online/stories/082799/bus\\_1D1CSXT.html#.Vkyk Bmflvcs](http://jacksonville.com/tu-online/stories/082799/bus_1D1CSXT.html#.Vkyk Bmflvcs). The article shows that transit times are critically important to UPS’s service.

Despite this admission that slower service can result in lost high-priority business, TPI complains that CSXT has not provided sufficient proof that high-priority intermodal traffic is sensitive to transit times. This complaint ignores that it is TPI's burden—not CSXT's—to demonstrate that the SARR provides a level of service on re-routed traffic that is the same as or better than that provided by the incumbent carrier. *See, e.g., Duke Energy Corp. v. CSX Transp., Inc.*, 7 S.T.B. 402, 418 (2004) (“*Duke/CSXT*”) (“[I]f a complainant wishes to re-route crossover traffic, [the complainant] must ensure that the combined operations of the SARR and the residual carrier would be at least as efficient as the existing operations.”); *Texas Municipal Power Agency v. BNSF Ry. Co.*, 6 S.T.B. 573, 591-98 (2003) (“*TMPA*”). Even in situations in which traffic is not re-routed, the SARR is expected—at a minimum—to maintain the same level of service as that provided by the incumbent. *See West Texas Utilities Co v. Burlington N. R.R. Co.*, 1 S.T.B. 638, 660 (1996) (recognizing that the SARR would have to be capable of handling over 40 million tons of traffic annually, “in order to provide the same level of service currently provided by BN for this traffic group.”). CSXT demonstrated on Reply that the leapfrog segments on the TPIRR would necessitate three new interchanges, each of which would require a minimum of 1.5 hours and likely additional time to change locomotive units to and from distributed power configurations. It remains TPI's burden to demonstrate how it could maintain the same level of service with these substantial additions to the transit times.

Perhaps recognizing its problem, TPI attempted on Rebuttal and in Supplemental Evidence to reduce interchange time by abandoning distributed power locomotive configurations (and thus avoiding configuration changes at interchanges). *See* TPI Reb. at III-C-152; *id.* at III-C-87, n.158. But changing the locomotive configuration would be insufficient to overcome the

impossibility of maintaining service standards for high-priority traffic while adding three new “leapfrog” interchanges.

TPI submitted an analysis purporting to show that trains carrying these high-priority shipments were 21 percent faster on TPIRR than on CSXT in the real world.<sup>118</sup> But TPI’s analysis is deeply flawed, and a corrected transit time analysis shows that the expedited leapfrog trains would be significantly slower on TPIRR. That is certainly not surprising. TPI proposes to transform a real-world movement over a single railroad into a hypothetical four-segment, three-interchange movement. TPI’s claim that such a four-segment, three-interchange movement somehow could achieve improved transit times is not credible.

TPI’s transit time analysis contains three critical methodological errors:

First, TPI compared actual real-world speeds for trains over the entire CSXT route (*i.e.*, both TPIRR and residual CSXT segments) to speeds from an RTC simulation that covered only part of the route (*i.e.*, the subset of segments replicated by TPIRR). For example, TPI’s comparison includes 18 expedited leapfrog trains that moved in the peak period, which have CSXT train symbols Q031 through Q039.<sup>119</sup> The Q031 train operates from North Bergen, NJ, to Jacksonville, FL; the SARR handles it between Baltimore, MD, and Pembroke, NC, and then again from Folkston, GA, to Jacksonville, FL, leaving the residual CSXT to operate the train over two separate segments, including one leapfrog segment between separate SARR portions. For its transit time comparisons, TPI calculated the average speed that CSXT achieved in the real world for the entire 975 miles between North Bergen and Jacksonville, and compared that figure to the average speed for 449 miles that are on the SARR.<sup>120</sup> It is improper to use the CSXT train

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<sup>118</sup> See TPI Supp. at III-C-25.

<sup>119</sup> TPI Supp. WP “TPIRR\_INTERMODAL\_TRANSIT\_TIME\_ANALYSIS\_SUPP.xlsx.”

<sup>120</sup> TPI Supp. WP “TPIRR\_INTERMODAL\_TRANSIT\_TIME\_ANALYSIS\_SUPP.xlsx.”

speeds over non-SARR segments—including routes across busy lines in New Jersey and through Philadelphia—as support for the notion that the SARR can provide the same level of service that CSXT provides on SARR segments. Overall, TPI’s analysis calculated the average speed that the SARR trains achieved over 370 miles, and compared it to its calculation of CSXT’s speeds over 782 miles—which includes more off-SARR miles (412) than the on-SARR portion.<sup>121</sup> Such an “apples to oranges” comparison is unreliable and should be rejected.

Second, TPI miscalculated what it labeled the “CSXT Transit Time.” TPI’s workpaper indicates that it used car event records as the source of its “First” and “Last” timestamps.<sup>122</sup> Those records, however, include reportings for other yard events for the flat car or container at the origin (before it is assigned to a train), and at the destination (after it has been removed from a train). By using the first and last time that the car is reported, TPI overstated CSXT’s actual train transit time—artificially creating the appearance that its TPIRR trains were relatively faster. For example, for the Q036 train, TPI used the car event records for GLDU 75281 that identified the earliest timestamp at Jacksonville of 11:07AM on December 16, and the latest timestamp at North Bergen of 4:06AM on December 18, from which TPI calculated a transit time of 41 hours.<sup>123</sup> Review of the car event records at North Bergen indicates that the 4:06AM record is not associated with a train, and that the last such record that reported the equipment to the Q036 train had a timestamp of 5:05PM on December 17, 11 hours earlier than the last timestamp that TPI used.<sup>124</sup> Further, the train sheet records for this Q036 train also contain a North Bergen

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<sup>121</sup> TPI Supp. WP “TPIRR\_INTERMODAL\_TRANSIT\_TIME\_ANALYSIS\_SUPP.xlsx.”

<sup>122</sup> TPI Supp. WP “TPIRR\_INTERMODAL\_TRANSIT\_TIME\_ANALYSIS\_SUPP.xlsx.”

<sup>123</sup> See TPI Supp. WP “TPIRR\_INTERMODAL\_TRANSIT\_TIME\_ANALYSIS\_SUPP.xlsx.”

<sup>124</sup> See CSXT Supp. Reply WP “Transit Time Restated.xlsx.”

timestamp at 5:05PM on December 17—not on December 18.<sup>125</sup> TPI thus inflated the transit time for this movement by 11 hours. By using the earliest and latest car reportings in the yard—without confirming whether they are associated with a train movement—TPI’s calculation is not an accurate assessment of CSXT’s train transit times.

Third, TPI’s comparison inexplicably fails to include all the additional hypothetical interchanges that would be required to operate this train between TPIRR and residual CSXT segments over its actual route of movement. As indicated above, most of the expedited leapfrog trains that handle CSXT’s high-priority UPS and Threads Express traffic would involve three new interchanges in each direction. But TPI’s workpaper included the time for only one interchange for northbound trains, and two for southbound trains. Specifically, for the northbound trains that require interchanges at Folkston, Pembroke, and Baltimore, TPI accounted for 30 minutes for the interchange at Pembroke, but assumed no time for the interchanges at the other two locations.<sup>126</sup> In the southbound direction, TPI accounted for 30 minutes for the interchanges at Baltimore and Folkston, but nothing at Pembroke. TPI may argue that for equipment costing purposes it is responsible for accounting only for time where the SARR receives the train in interchange, but that is beside the point. The question is whether the overall transit time for the posited three-interchange leapfrog movement can meet the needs of the customer, and any reliable accounting of that transit time must include time for all three interchanges—regardless of the railroad account to which the time is assigned.

When TPI’s comparison is corrected solely to address the three flaws identified above, nearly three-quarters of the trains in TPI’s comparison turn out to be slower on the SARR than

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<sup>125</sup> See CSXT Supp. Reply WP “Transit Time Restated.xlsx.”

<sup>126</sup> TPI Supp. WP “TPIRR\_INTERMODAL\_TRANSIT\_TIME\_ANALYSIS\_SUPP.xlsx.”

on the real-world CSXT.<sup>127</sup> Figure 5 below summarizes the results for the three groups of trains: southbound trains from NY/NJ (which enter the SARR at Baltimore), northbound trains to NY/NJ (which exit the SARR at Baltimore), and southbound trains from Charlotte (which enter the SARR at Monroe, NC). For each group, more than 60% of the SARR’s trains are slower than CSXT’s actual service, and each of the three groups has a slower average time on the TPIRR, with two of the three groups more than an hour and a half slower. The last column in the table shows CSXT’s average actual time for these expedited trains throughout the entire Base Year, which for each of the three groups is more than one hour faster than on TPI’s SARR.<sup>128</sup>

**Figure 5**  
**Restatement of TPI’s Transit Time Comparison<sup>129</sup>**

	Average for 18 Peak-Period Trains				Full Year Average for CSXT Actuals 1/
	TPI RTC	CSXT Actual	TPI Trains Slower than CSXT		
			Count	%	
Baltimore-Pembroke-Folkston-Jacksonville (Southbound) Average Minutes that TPI RTC is Slower than CSXT Actual	13.08	12.72	5	63%	12.01 65
Jacksonville-Folkston-Pembroke-Baltimore (Northbound) Average Minutes that TPI RTC is Slower than CSXT Actual	12.62	11.11	5	71%	11.55 64
Monroe-Pembroke-Folkston-Jacksonville (Southbound) Average Minutes that TPI RTC is Slower than CSXT Actual	4.84	3.13	3	100%	3.80 62

1/ Includes all expedited leapfrog trains (Q031-Q039) from 2012.

For these reasons, TPI’s Supplemental Evidence defense of the TPIRR’s supposed ability to provide adequate service to UPS and Threads Express traffic should be rejected.

<sup>127</sup> See CSXT Supp. Reply WP “Transit Time Restated.xlsx.” In addition, for Train Q031 on December 12, the SARR train is only 3 minutes faster in RTC than CSXT in the real world.

<sup>128</sup> It should be noted that CSXT’s re-calculation of TPI’s SARR time in Figure 5 provides the low end of estimated transit times. For this comparison, CSXT relied upon the RTC model input that each interchange would add only 30 minutes to the elapsed time. This assumes near-perfect coordination between interchange partners, at each of three different locations along the route, for every train. As this is unlikely to be achieved consistently in the real world, it would be expected that TPI’s SARR trains would be slower than CSXT’s actuals to an even greater extent than that summarized in the table.

<sup>129</sup> See CSXT Supp. Reply WP “Transit Time Restated.xlsx.”

**E. TPI's Supplement To Its Cross-Subsidy Argument Is Unauthorized, And Its Challenge To Settled Board Precedent Should Be Rejected.**

TPI's Supplemental Evidence includes a nine-page argument setting forth reasons why the Board should reverse *Otter Tail's*<sup>130</sup> holding that potential rate relief should not create a cross-subsidy. TPI submitted this argument in direct violation of the *Supplemental Evidence Order* and without seeking leave from the Board. The Board should reject this procedurally improper argument. But even if the Board were to consider it, TPI has articulated no persuasive reason why the Board should reverse settled precedent and allow a rate prescription predicated on the complainant being cross-subsidized by other shippers.<sup>131</sup>

The *Supplemental Evidence Order* in no way authorized TPI to include additional cross-subsidy arguments in its Supplemental Evidence. TPI first raised its challenge to *Otter Tail* in its Rebuttal Evidence filed November 5, 2014. *See* TPI Reb. at III.H.b.i. and ii. Simultaneous with filing its Rebuttal Evidence, TPI submitted a Petition to Supplement the Record on several items, including its argument that *Otter Tail* should be overruled. Notably, TPI's request to supplement the record was expressly limited to specific items of Rebuttal evidence filed contemporaneously with its Petition on November 5, 2014.<sup>132</sup> In other words, TPI sought forgiveness for the new

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<sup>130</sup> *Otter Tail Power Co. v. BNSF Ry. Co.*, STB Docket No. 42071(served Jan. 27, 2006) (“*Otter Tail*”).

<sup>131</sup> As CSXT noted in its Opening Supplemental Evidence, the Board should have no need to reach this issue. The Board only needs to consider TPI's challenge to *Otter Tail* if the Board determines that a rate prescription is necessary, and as CSXT's Reply Evidence demonstrated, a properly conducted SAC analysis shows that the challenged rates are reasonable by a comfortable margin.

<sup>132</sup> *See* TPI Petition at 1 (“TPI requests that the Board accept into the evidentiary record certain evidence contained in *TPI's Rebuttal Evidence*, which has been filed *contemporaneous with this Petition*, that otherwise might be considered impermissible rebuttal”) (emphasis added); *id.* at 2 (“TPI seeks to supplement the record with the argument presented in its Rebuttal Parts III.H.b.i. and ii”); *id.* at 5 (“TPI asks the Board to *accept the aforementioned supplemental evidence*”) (emphasis added).

items it included in its Rebuttal Evidence—not permission to supplement the record with additional items in the future.

When the Board partially granted TPI’s Petition to Supplement the Record, it agreed that TPI could supplement the record with its Rebuttal *Otter Tail* argument and that CSXT could respond to that argument in its Opening Supplemental Evidence. *See Supplemental Evidence Order* at 9, n.29 (“*CSXT’s* evidence should include its *Otter Tail* . . . reply arguments.”) (emphasis added). The Board did not direct TPI to include additional *Otter Tail* evidence—on the contrary, it specifically prohibited TPI from making further changes to its evidence. *See id.* at 9 (“parties may not revise their evidence beyond the scope that we describe here.”).

The sections of TPI’s Supplemental Evidence that expand upon its argument that *Otter Tail* should be overruled are thus far outside the limited scope of supplemental evidence authorized by the Board, and they should be rejected for that reason alone.<sup>133</sup>

Even if the Board were to consider TPI’s unauthorized *Otter Tail* arguments, they should be rejected, for three reasons: (1) *Otter Tail* is a natural corollary of the basic economic principle against cross-subsidization; (2) *Otter Tail* is a settled part of the regulatory landscape that TPI has presented no cause to reconsider; and (3) TPI’s criticisms of *Otter Tail* are meritless and largely repeat arguments the Board considered and rejected in *Otter Tail* itself.<sup>134</sup>

First, the Board and the courts have recognized that “a basic principle” of the *Coal Rate Guidelines* and “the primary purpose of the SAC test,” is to guard against ‘both cross-subsidization by and cross-subsidization of the captive issue traffic’ when determining the reasonableness of the issue traffic’s rates.” *PPL Montana, LLC v. STB*, 437 F. 3d 1240, 1245

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<sup>133</sup> The sections are located at I-15 through 16, and III-H-4 through 13 of TPI’s Supplemental Evidence.

<sup>134</sup> CSXT also incorporates by reference its Supplemental Opening Evidence responding to TPI’s Rebuttal Evidence claiming that *Otter Tail* should be reversed.

(D.C. Cir. 2006), quoting *PPL Montana, LLC v. BNSF Ry. Co.*, 6 S.T.B. 286, 295 (2002) (“*PPL*”); see *Coal Rate Guidelines, Nationwide*, 1 I.C.C. 2d 520, 542-46 (1985) (“*Coal Rate Guidelines*”).

In this case, however, TPI argues that a complainant should be allowed to *create* a cross-subsidy for its own traffic using the Board’s reparations process, and to *maintain* that cross-subsidy for the indefinite future (or at least for the length of any applicable rate prescription). Stated plainly, TPI argues that shippers should be allowed to pay less than is necessary to cover the stand-alone costs of its rail shipments simply because other shippers in its traffic group may be paying rates that exceed their stand-alone costs. But that result is squarely at odds with the fundamental principle that shippers should not be required to cross-subsidize other traffic.

Second, TPI has not come close to satisfying the standard for upsetting settled rate case precedent, which at a minimum requires a party to come forward with “new evidence or different arguments”<sup>135</sup> and not merely to repeat arguments rejected in past proceedings. *Otter Tail* remains well-established law whose validity has been recognized in multiple proceedings. See CSXT Supp. Op. at 56-57. The cross-subsidy principles of *PPL* were “affirmed in a comprehensive and unequivocal decision” by the D.C. Circuit, and there is “no persuasive reason [. . . to question the inherent logic” of the Board’s conclusion that the internal cross-subsidy test is a limit on potential rate relief. *Major Issues in Rail Rate Cases*, STB Docket No. 657 (Sub-No. 1), at 9 n.4 (served Oct. 30, 2006) (“*Major Issues*”) *aff’d sub nom. BNSF Ry. Co. v. STB*, 526 F.3d 770 (D.C. Cir. 2008). The Board has reaffirmed the validity of the *Otter Tail* internal cross-subsidy test in recent cases, including *Arizona Elec. Power Cooperative, Inc.*

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<sup>135</sup> See *General Procedures for Presenting Evidence In Stand-Alone Cost Cases*, 5 S.T.B. 441, 446 (2001) (“*SAC Procedures*”) (“[T]he parties to SAC cases are cautioned not to attempt to relitigate issues that have been resolved in prior cases. Unless new evidence or different arguments are presented, we will adhere to precedent established in prior cases.”).

*v. BNSF Ry. Co. & Union Pac. R.R. Co.*, STB Docket No. 42113, at 9 (served Nov. 16, 2011), (“*AEPCO 2011*”) and *Western Fuels Ass’n & Basin Elec. Power Cooperative v. BNSF Ry. Co.*, STB Docket No. 42088, at 10 (served Sept. 10, 2007) (“*WFA*”); *see* CSXT Supp. at 57.

Third, TPI’s substantive arguments are simply not persuasive, for the reasons articulated in CSXT’s Supplemental Evidence. TPI’s first argument that the *Otter Tail* analysis is not based on “real-world rates” was raised and rejected in *Otter Tail* itself. Specifically, in the *Otter Tail* proceeding, the shipper objected to any limit on the available rate prescription after the threshold *PPL* analysis, arguing that the Board’s remedial authority was limited to the issue movements, that revenues earned from other movements would be unaffected by any prescription, and that any limit on the rate prescription would provide the defendant with unjustified profits. *See Otter Tail* at 10-11. The Board rejected this criticism, noting that other captive shippers in the traffic group could challenge their own rates in the future, that rates currently under contract will be renegotiated, and that potential regulatory relief provides the backdrop to such negotiations. *Id.* at 11. Thus, the Board said, “our analysis must assume the repeated application of the SAC test to all shippers in the traffic group.” *Id.* The Board added, “it would be inappropriate to circumvent Congress’ intent by shifting any unregulated revenues from the railroad to a particular captive shipper.” *Id.* TPI’s claims that it is “bootstrapping” for CSXT to cite the Board’s rejection of a near-identical argument in *Otter Tail* misses the point, which is that the Board considered and rejected the exact same argument that TPI is making now.

TPI’s reliance on *Wisconsin Power & Light Co. v. Union Pac. R.R. Co.*, 5 S.T.B. 955 (2001) (“*WP&L*”) is similarly unavailing. *See* CSXT Supp. at 58-59. In *WP&L*, the defendant railroad argued for an adjustment to the SAC analysis to reflect what it called the “asymmetric risk” that the stand-alone railroad in that case might in theory be subject to competition from

another stand-alone railroad. The Board declined, because it determined that the incumbent railroad faced no such risk. The case did not address any issues involving cross-subsidy; in fact, the Board's decision mentioned cross-subsidization only once, in an introductory discussion of the SAC test. TPI asserts that the possibility of competitive entry by another SARR in *WP&L* is analogous to the "repeated application of the SAC test" discussed in *Otter Tail*. TPI Supp. at III-H-7. In fact, there is no logical connection between these concepts, other than the fact that both cases involved Constrained Market Pricing. *See CSXT Supp. at 58.*

Finally, TPI argues that "it would not be costly, impractical or inefficient" to reopen and reconsider changed circumstances in completed SAC cases. TPI contends that the number of actual cases that potentially could be re-opened might be limited. But although the number of reopened cases might be small, TPI does not acknowledge the size and complexity of each SAC case before the Board and does not address how the Board could marshal its limited administrative resources to manage a substantial increase in its caseload. TPI also argues that "no other adjustments to the Board's models would be required" in the course of updating newly prescribed rail rates. But it would be overly optimistic to presume that reopened cases would not involve multiple issues requiring resolution by the Board. In short, there is good reason to believe that TPI's proposal for routinely reopening rail rate cases would indeed be "costly, impractical [and] inefficient." TPI has presented no reason why the Board should abandon its settled precedent, and TPI's *Otter Tail* argument should be rejected.

**CONCLUSION**

For the above reasons and those set forth in CSXT's Reply Evidence and Supplemental Evidence, the Board should find that TPI's SAC presentation fails to demonstrate that the challenged rates are unreasonable and that TPI is entitled to no relief whatsoever.

Respectfully submitted,



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Dated: November 20, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of November 2015, I served a copy of the foregoing CSXT Reply to Total Petrochemicals & Refining USA, Inc.'s Compliance Evidence and Supplemental Opening Evidence by email and hand-delivery upon:

Jeffrey O. Moreno  
Thompson Hine LLP  
1919 M Street, N.W., Suite 700  
Washington, D.C. 20036



Hanna M. Chouest

ACTIVE 211069551v.1

# **Exhibit 1**

**To**

**CSX Transportation, Inc.'s Reply To  
Total Petrochemicals & Refining USA, Inc.'s Compliance Opening  
Evidence And Supplemental Opening Evidence**

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**Docket No. NOR 42121**

**REDACTED**

# **Exhibit 2**

**To**

**CSX Transportation, Inc.'s Reply To  
Total Petrochemicals & Refining USA, Inc.'s Compliance Opening  
Evidence And Supplemental Opening Evidence**

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**Docket No. NOR 42121**

**REDACTED**

# **Exhibit 3**

**To**

**CSX Transportation, Inc.'s Reply To  
Total Petrochemicals & Refining USA, Inc.'s Compliance Opening  
Evidence And Supplemental Opening Evidence**

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**Docket No. NOR 42121**

**REDACTED**

# **Exhibit 4**

**To**

**CSX Transportation, Inc.'s Reply To  
Total Petrochemicals & Refining USA, Inc.'s Compliance Opening  
Evidence And Supplemental Opening Evidence**

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**Docket No. NOR 42121**

**REDACTED**

# **Verifications**

**To**

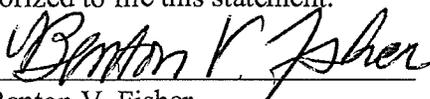
**CSX Transportation, Inc.'s Reply To  
Total Petrochemicals & Refining USA, Inc.'s Compliance Opening  
Evidence And Supplemental Opening Evidence**

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**Docket No. NOR 42121**

**VERIFICATION**

I, Benton V. Fisher, verify under penalty of perjury that I am the same Benton V. Fisher whose Statement of Qualifications appears in Part IV of the Narrative portion of CSXT's Reply Evidence in this proceeding; that I am sponsoring CSXT's reply supplemental operations and operating expense evidence; that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Benton V. Fisher

Executed on this November 19, 2015.

**VERIFICATION**

I, Kaustuv Chakrabarti , verify under penalty of perjury that I am the same Kaustuv Chakrabarti whose Statement of Qualifications appears in Part IV of the Narrative portion of CSXT's Reply Evidence in this proceeding; that I am sponsoring CSXT's reply supplemental operating evidence; that I know the contents thereof, and that the same are true and correct.

Further, I certify that I am qualified and authorized to file this statement.



---

Kaustuv Chakrabarti

Executed on this November 19, 2015.

### VERIFICATION

I, Michael Matelis, verify under penalty of perjury that I am the same Michael Matelis whose Statement of Qualifications appears in Part IV of the Narrative portion of CSXT's Reply Evidence in this proceeding; that I am sponsoring CSXT's reply supplemental operations evidence; that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
\_\_\_\_\_  
Michael Matelis

Executed on this November 19, 2015.