

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 733

241209

EXPEDITING RATE CASES

Comments of the
Joint Carload Shippers

ENTERED
Office of Proceedings
August 1, 2016
Part of
Public Record

Pursuant to the Advance Notice of Proposed Rulemaking (“ANPR”) served by the Surface Transportation Board (“STB” or “Board”) in the above-captioned docket on June 15, 2016, the American Chemistry Council, the Dow Chemical Company, and M&G Polymers USA, LLC (collectively the “Joint Carload Shippers”), hereby submit these opening comments on proposals for expediting rate cases. The Board has initiated this proceeding pursuant to Section 11 of the STB Reauthorization Act of 2015. The ANPR solicits comments on multiple proposals for expediting rate cases, particularly stand-alone cost (“SAC”) cases, developed from Board experience processing rate cases and from informal meetings with stakeholders. The Joint Carload Shippers are pleased to have this opportunity to comment on these proposals and to provide additional ideas and insights of their own. These comments are informed by the rate case experience of Thompson Hine, LLP and L. E. Peabody and Associates, Inc. (“L. E. Peabody”), who have represented ACC members in several recent SAC cases before the agency. In addition, the Joint Carload Shippers are submitting the attached joint verified statement of Thomas D. Crowley and Robert D. Mulholland, President and Vice President respectively, of L.E. Peabody (“Crowley/Mulholland V.S.”).

I. Introduction.

The Joint Carload Shippers represent companies that tender traffic to railroads primarily in carload, as opposed to unit train, volumes. They strongly advocated for passage of the STB Reauthorization Act, and Section 11 in particular, because the existing process for SAC cases is too long, expensive, and complex.

The Board developed SAC for use in coal rate cases, as evidenced by the caption in the docket adopting SAC, *Coal Rate Guidelines, Nationwide*, 1 I.C.C. 2d 520 (1985). While the unit train operations for coal traffic may be appropriate for SAC because the transportation of coal in unit trains between a coal mine and a power plant entails a relatively more limited scope SAC analysis that typically encompasses sufficiently large volumes to economically justify the enormous cost of a SAC presentation, the same is not true for carload traffic.

To accumulate sufficient traffic volume to justify the economics of litigating a SAC case, carload shippers typically must aggregate scores of lower-volume issue movements that often require a stand-alone railroad (“SARR”) that replicates much of the defendant’s real-world network. This has the perverse consequence of increasing the cost and complexity of SAC cases for carload shippers well beyond the \$5 million figure the Board acknowledged for unit train coal cases nearly a decade ago.¹ Moreover, unlike electric utilities which transport large volumes of coal between the same origin and destination for decades, carload traffic routes are more fluid. Thus, even if a carload shipper prevails in a SAC case, it may not benefit from the prescribed rates for the full 10-year prescription period. Furthermore, because a carload shipper must pay the challenged tariff rates during a multi-year SAC litigation, it may lose the business

¹ See, STB Ex Parte No. 646 (Sub-No. 1), *Simplified Standards for Rail Rate Cases*, slip op. at 30-31 (served Sept. 5, 2007) (“*Simplified Standards*”).

to a competitor during the litigation. This makes it even more difficult for carload shippers to justify their substantial SAC litigation costs.

Despite these facts, in the 30 years since *Coal Rate Guidelines*, the Board has never taken steps to provide an alternative to SAC for carload shippers. Although the Board has offered the three-benchmark and simplified-SAC options, those options were never considered by the Board to be the equal of SAC.² Rather, they came with conditions and trade-offs in the amount and duration of relief relative to SAC to discourage their use except in limited circumstances.³ Those conditions have rendered those alternatives ineffective, undesirable, or both. For example, the three-benchmark standard caps relief in terms of dollars, and the duration of the prescribed rates is half that of SAC. In addition, because the three-benchmark standard compares the challenged rate to the rates of other captive traffic, only the most extreme outliers have any potential to obtain a rate reduction. Simplified-SAC similarly offers relief only for half the duration of SAC while most of the “simplifications” generate a higher prescribed rate than SAC. Moreover, some of the original simplifying assumptions recently have been removed from the model. *Crowley/Mulholland V.S.* at 13. The litigation cost savings from using Simplified-SAC are paltry compared with these trade-offs.⁴

If the statutory protections against unreasonable rates are to have any meaning for carload shippers, the Board must adopt a meaningful alternative to SAC for carload traffic and find ways to make SAC cases more accessible to carload shippers. In *Ex Parte No. 722, ACC*, as part of

² See *Simplified Standards*, slip op. at 5 (“[N]either approach offers as much precision and degree of confidence as a Full-SAC analysis...”).

³ *Id.* at 27 (“[A]n overly simplified approach should not be applied to a case when the amount in dispute justifies the use of a more robust and precise approach.”).

⁴ The Board could make Simplified-SAC more attractive to carload shippers simply by extending the prescription period to 10 years, the same as SAC.

the Concerned Shipper Associations, has urged the Board to develop revenue adequacy rate standards, which derive from the same constrained market pricing principles that govern SAC, as an alternative to SAC. Unless and until the Board does so, however, it has a responsibility to make SAC a viable option for carload shippers by reducing the duration, cost, and complexity of SAC cases.

These comments follow the headings in the ANPR.

II. Pre-Filing Requirement

The Joint Carload Shippers generally support the proposed pre-filing notice requirement for rate cases. ANPR at 3. There are two primary benefits from such a requirement associated with mediation and discovery.

First, the Board's current mandatory mediation occurs after the filing of a rate complaint. Typically, a shipper decides to file a complaint only after all other reasonable efforts have been exhausted. Mediation efforts thus are more likely to be successful when pursued at an earlier stage in the process. Indeed, mediation can be a distraction after the complaint has been filed and the parties are in litigation mode. This concern is even greater with the more compressed procedural schedule adopted in the STB Reauthorization Act. Mediation merits the full attention of the parties. Furthermore, because a successful mediation would avoid the need for a complaint, the economy of both the Board and the parties should favor attempts to mediate before their focus is on litigation tasks.

Second, a pre-filing notice could expedite cases by providing early notice of impending discovery obligations. A pre-filing notice will alert the defendant to an impending complaint to begin the process of gathering responsive initial disclosure information so that the defendant can comply shortly after the complaint has been filed. The ability to initiate the process of gathering

responsive discovery information before filing a complaint could require less time dedicated to discovery in the procedural schedule.

A pre-filing notice requirement should be no less than 30 days, although 60 days probably is optimal to afford sufficient time for scheduling and conducting mediation. The content of the notice should be sufficient to inform both the Board and the defendant of the challenged rate and affected traffic.

III. Discovery: Standardized Requests and/or Disclosures.

Given the quantity of discovery that is required to present a SAC case, it is not surprising that discovery consumes a large, if not the largest, proportion of the SAC procedural schedule. Correspondingly, discovery also presents the greatest opportunity to expedite a case. In response to the ANPR, at pages 3-4, the following comments address various ideas for expediting SAC cases through the discovery process.

Standardized/Automatic Disclosures. The first idea focuses upon standardized discovery requests and disclosures. The former concept is implicit in the latter because standardized disclosures contemplate requests to which they are responsive. After 30 years of SAC litigation, much of the discovery subject matter has become standardized; it does not change significantly from one case to the next, although the form in which it is maintained may change, especially as technology improves.⁵ Nevertheless, the parties still must go through the “song and dance” of serving discovery, followed by objections, then negotiations, and ultimately responses. Even in the best of circumstances, this routine can take several months. Therefore, the Joint Carload

⁵ Exhibit 3 to the Crowley/Mulholland V.S. contains copies of all discovery served by the Complainant in Docket No. 42125, *E.I. du Pont de Nemours and Company v. Norfolk Southern Ry. Co.*, which is representative of the discovery requests that complainants have served in all recent SAC cases. The First Set of Discovery Requests, in particular, represent the base level of discovery, whereas the other requests seek supplemental and follow-up information.

Shippers believe it would be appropriate for the Board to require both complainants and defendants to make certain automatic disclosures concerning both SAC and market dominance within a very short time after the filing of a complaint, thereby avoiding the steps and consequent time needed to serve, object and respond to many of the discovery requests.

Such automatic disclosures would be comparable to the initial disclosures required by Federal Rule of Civil Procedure (“FRCP”) 26(a), with one principal difference. Specifically, FRCP 26(a) is a very general requirement because that rule applies to the many different types of cases and subject matter brought before federal courts. The information needed for a SAC case, in contrast, is far more predictable and thus capable of more precision in the identification of information and documents that should be disclosed. The Board, at page 4 of the ANPR, has identified several such categories. Messrs. Crowley and Mulholland address each of those categories in their Verified Statement and offer a more comprehensive list. Crowley/Mulholland V.S. at 10-12. They emphasize, however, that while the content is predictable, the description of initial disclosures needs to remain sufficiently flexible to adapt to changing formats without constant amendment. *Id.* at 9-10.

Standard market dominance disclosures might include three years of data on the complainant’s use of alternative transportation modes for the issue commodity and complainant’s contracts for alternative transportation of the issue commodity during the preceding three years.

While we support standardized disclosures, the Joint Carload Shippers do not believe there is much merit to standardized discovery requests. As previously noted, the discovery requests in SAC cases already are fairly standard. The time savings is not in the standardization of discovery requests, but in requiring automatic and earlier production of responsive

information. Also, many SAC cases will have elements that are not subject to standardization, which still will require some adherence to the regular discovery process. *Crowley/Mulholland V.S.* at 3.

Traffic Data. The greatest benefits from standardized disclosures can be achieved from the production of traffic and revenue data, which is the single most significant bottleneck in a SAC case. If this bottleneck could be broken, the Board could shave a significant amount of time, perhaps as much as 90 days based on recent experience, from the current time that complainants require to develop SAC evidence. Such time savings can be achieved by standardizing the content and format of the data provided. This could be accomplished in a number of ways, including requiring the railroads to provide intact relational databases rather than individual flat files culled from railroad databases, and by requiring annual filing of select data with the Board, which would act as the repository of the data, much like the waybill sample data is handled today.

Although traffic and revenue data forms the foundation for every aspect of the SAC analysis, it typically is among the last information produced by the railroad and it nearly always contains gaps and/or unexplained elements that require a time-consuming exchange of correspondence before the information is complete and fully usable. The additional time needed to review, process, and understand this data is the single most common reason why complainants request extensions to the procedural schedule for submitting opening evidence. Standardizing the content and format of this data and making it available to the complainant earlier in the process would do more to expedite SAC cases than any other concept in the ANPR.

Standardizing the format of traffic and revenue data is the most important first step. Although the data requested by complainants has changed very little over the last several SAC

cases, the format in which the information has been produced has varied significantly. Crowley/Mulholland V.S. at 4. In all recent SAC cases, railroads have produced traffic data in a series of tables (flat files) that have been disassembled from their original relational format (within a database). *Id.* But those flat files have changed with respect to content and structure from case-to-case, even in cases involving the same defendant that have occurred in rapid succession. *Id.* Upon receipt of terabytes of flat files, the complainant must restore each table into a proper database file and rebuild the relational database from scratch, which entails establishing keys and links among the individual tables. In is nonsensical to put complainants to this enormous expense of time and effort when the railroads already maintain this information in relational databases in the ordinary course of business. *Id.* at 4-6. The Board should require railroads to provide this data in an intact relational format. If the traffic and revenue data were limited to the specific fields required, provided with functioning links, and accompanied by complete decoders, complainants could reliably develop SAC evidence within the standard procedural schedule. *Id.* at 6.

As an even more expedient alternative, the Board could collect annual traffic and revenue data, with content in a standardized format, from all Class I railroads. *Id.* The Board could then release that data to complainants upon filing of the complaint and issuance of a standard protective order. This would give complainants access to this critical data up to six months earlier than is typical, and without the additional time frequently required to understand the data and/or address data gaps.

Although the Board has expressed concern about how to standardize the data and the burdens upon rail carriers, those concerns must be balanced against the burdens imposed on complainants under the current model. ANPR at 4. As Messrs. Crowley and Mulholland

explain, some of the information already is collected by railroads and maintained by the Board in the waybill sample, which is a standardized format. *Crowley/Mulholland V.S.* at 7-9. To create the waybill sample, railroads already must compile the full universe of waybill data. *Id.* at 7-8. Although additional information beyond that collected by the waybill sample would be needed for SAC purposes, that information also is contained in the same databases in which the waybill data resides, and would merely require the railroads to capture and produce these linked tables along with their current waybill reporting.⁶ *Id.* Thus, the additional burden should not dissuade the Board.

Moreover, the Board's concern about the burden this would place upon railroads must be balanced against the burden imposed upon complainants in every single SAC case of reconstructing a relational database of traffic and revenue data from the disparate parts produced in discovery, which is the number one factor driving the cost and complexity of SAC cases. The rail industry, which repeatedly touts SAC as the "gold-standard" for ratemaking, should bear some responsibility for making this lengthy, costly, and complex standard more accessible. As the party that possesses and maintains databases with functioning links in the ordinary course of business, it is reasonable to require railroads to maintain and produce that data in a format that is conducive to the development of SAC evidence.

The standardization of traffic and revenue data would alleviate the substantial burden that complainants currently bear, and the pre-collection of that data by the Board would be one way to make this critical information available to complainants much earlier in the process. This would shave significant time and cost from the SAC process.

⁶ The Board has concluded that preparation of the waybill data requires approximately 75 hours, which is less than two standard work weeks to gather, standardize and produce. *Crowley/Mulholland V.S.* at 8.

Software Not Publically Available. The Board has sought comment on the use of computer software in SAC cases that is not publically available. This has become a problem in recent years primarily because railroads have used the MultiRail software program, which is proprietary to Oliver Wyman, in their reply evidence. In the ANPR, at page 4, the Board has requested comment on whether and when to require the disclosure of non-public software that a party intends to use. This proposal, however, would not address the most significant concerns over this issue.

The biggest problem with the introduction of new software into a SAC case is the inevitable learning curve, and associated software acquisition and training costs, to obtain just the minimum level of proficiency needed to even understand the evidence developed using that software, much less respond to it. A complainant is significantly disadvantaged when required simultaneously to learn a new software during the same time in which it is expected to develop rebuttal evidence within the current procedural schedule. *Crowley/Mulholland V.S.* at 12. While disclosing an intent to use new software earlier in the process could provide a few additional months to study a user manual to learn the basic functions, one cannot truly become proficient with such software until they have the ability to work with actual data. But that cannot occur until the defendant submits its evidence. This imposes a significant burden upon the complainant in terms of cost and time to learn a new software package while at the same time evaluating the defendant's reply evidence and developing rebuttal arguments. These consequences are not conducive to expediting SAC cases.

In addition, the proprietary nature of the software renders its use prejudicial to the complainant. For example, Oliver Wyman originally only would provide MultiRail to railroads.⁷ In the *DuPont* and *SunBelt* cases,⁸ NS made special arrangements with Oliver Wyman to provide the complainants with a limited license to use the software.⁹ But neither complainant had the option of using MultiRail to develop their opening evidence, if they had wanted to do so. Nor did they have a working knowledge of the software to do so.

Indeed, because MultiRail is sold to and used by railroads, the only truly proficient users of that software are a small cadre of present and former railroad employees and Oliver Wyman employees. It is unrealistic to expect that Oliver Wyman, which earns revenue from providing MultiRail and related consulting services to railroads, would serve as an expert witness for complainants. Nor would hiring a current rail employee be an option. That leaves only former railroad employees, of which few are willing to testify in opposition to their former employers. Since many former rail employees who are engaged in consulting work depend upon their former employers for such work, they understandably are reticent to bite the hand that feeds them. If unable to engage an experienced user of the software, complainants must rely upon consultants who are not proficient in the software to evaluate and respond to the railroad's evidence based upon that software.

Furthermore, there are significant costs associated with the proprietary software and hardware. In the case of MultiRail, the defendants provided complainants with a temporary

⁷ See, "Complainants' Joint Reply to Defendant's Petition for Clarification," Docket No. 42125, *E.I. du Pont de Nemours & Company v. Norfolk Southern Ry. Co.*, at 3 (filed Feb. 14, 2013) ("Joint Reply").

⁸ Docket No. NOR 42125, *E.I. du Pont de Nemours & Company v. Norfolk Southern Ry. Co.* ("DuPont"); Docket No. NOR 42130, *SunBelt Chlor Alkali Partnership v. Norfolk Southern Ry. Co.* ("SunBelt").

⁹ *Joint Reply* at 5-6.

license to a read-only version of the software, which lacked the full functionality of the version the defendants themselves used to develop their evidence and precluded complainants from modifying the defendants' reply evidence on rebuttal.¹⁰ Although Oliver Wyman subsequently agreed to make the fully-functional version of MultiRail available to complainants, it insisted upon a sizeable license fee to be paid by complainants that would be valid only for each case.¹¹ In other words, instead of purchasing the software, complainants or their consultants could only purchase a one-time use. Oliver Wyman acknowledged that it established this pricing structure to preclude other consultants from encroaching upon its own consulting business based around MultiRail.¹² While a SAC consultant might be willing to purchase the software itself as an overhead charge for a tool it could use to the benefit of other clients in future rate cases, it has no incentive to do so for a one-time use. Furthermore, because complainants don't have the option of comparative shopping, they effectively are captive to whatever charges the software proprietor chooses to assess.

Even though the defendants have paid the license fee for the read-only versions of MultiRail used in recent cases, complainants nevertheless ended up paying significant additional charges to Oliver Wyman.¹³ For example, Oliver Wyman strongly discouraged the complainants from installing both the software and the defendant's MultiRail data on their own computer and advised them instead to lease a laptop from Oliver Wyman with the data pre-installed.¹⁴ Not

¹⁰ *Id.* at 6-7.

¹¹ *Id.* at 9-10.

¹² *Id.* at 3 (“We have been sensitive to use of the MultiRail system by third parties, such as consulting and legal firms, since we did not want to create competition for our own consulting business.”).

¹³ *Id.* at 9.

¹⁴ *Id.* at 7

having any familiarity with MultiRail and lacking the time to deal with potential installation problems, complainants understandably heeded that recommendation. This meant that only people with direct physical access to the laptop could work with the software, and only one user at a time could work on that portion of the project. Complainants also had little choice but to purchase Oliver Wyman's software training and support package.¹⁵

Experience with the proprietary MultiRail software contrasts starkly with the publically-available RTC Model that has become standard software in SAC cases. L.E. Peabody has purchased its own copy of the RTC Model which it can use for any client on any matter as many times as it desires without incurring additional charges. L.E. Peabody runs the RTC Model on its own hardware with employees who are proficient in its use. Even if MultiRail were to become as standard in SAC cases as the RTC Model, the proprietary restrictions imposed by Oliver Wyman would make it far more difficult and costly to use.

In summary, the concept of requiring early disclosure of new software not available to the public barely scratches the surface of concerns over the use of such software. Apart from the prejudice to complainants, any use of such software inherently is inconsistent with this proceeding's objective of expediting rate cases.

IV. Discovery: Other Ideas.

The ANPR, at pages 4-5, solicits comment on several other general discovery ideas to expedite rate cases. These include limits upon the number of discovery requests, use of requests for admission, standardizing the scope and terminology of commonly used discovery terms, and requiring parties to certify that they have consulted with other parties before filing motions to compel or to modify the procedural schedule.

¹⁵ *Id.* at 8-9.

Discovery Limits. The Board has asked whether limits on the number of discovery requests would be appropriate if the Board requires mandatory initial disclosures. This would be similar to limits imposed by FRCP 33 on the number of interrogatories. It should be noted, however, that the FRCP does not contain a comparable restriction on the number of document requests, which suggests that any limit adopted by the Board similarly should apply only to interrogatories.

The Joint Carload Shippers are not averse to the concept of some discovery limits under the circumstances described, but they are highly sensitive to the fact that defendants in SAC cases possess the overwhelming majority of information needed to present a SAC case. As such, unduly restrictive discovery limits will be far more prejudicial to complainants. The appropriate scope of such limits should depend heavily upon the nature and scope of any initial disclosure requirements. There also would need to be an expedited process for obtaining essential discovery beyond the limits. This suggests that the Board should refrain from considering discovery limits until it settles upon initial disclosure requirements, and perhaps, even until after it has some experience with whether unduly burdensome discovery requests are a problem in a regime of initial disclosure requirements.

Requests for Admission. The Joint Carload Shippers believe that requests for admission can play a role in expediting the market dominance portion of rate cases. Market dominance is not always contested. However, sometimes a defendant waits until its reply evidence to make this declaration, which means that the complainant had to undertake the time and effort to develop unnecessary evidence.¹⁶

¹⁶ In all of the following cases, the defendant conceded market dominance as to some of the issue movements, and in the case of *SunBelt* the only issue movement. *E.g.*, *SunBelt*; *DuPont*;

Requests for admission serve two vital purposes, both of which are designed to expedite cases: (a) to facilitate proof with respect to issues that cannot be eliminated from the case, and (b) to narrow the issues by eliminating those that can be.¹⁷ Thus, theoretically a complainant should be able to avoid the preparation of market dominance evidence unnecessarily through a request for admission during discovery. Frequently, however, such requests are met with objections along the following lines that the Request: requires a special study, prematurely and inappropriately demands that defendant disclose its litigation position before the submission of opening evidence, and/or calls for a legal conclusion.

The advisory notes to FRCP 36 address these objections in several ways.¹⁸ First, requests for admission are not limited to just matters of fact, but also may include matter of opinion and matters involving mixed law and fact. With respect to the latter, the advisory notes observe that disputes may be best resolved in the presence of the judge after much or all of the other discovery has been completed. Notably, this allow defendants to complete discovery before responding but still would require them to respond before the complainant submits opening evidence. Second, it is not appropriate to object on grounds that the matter is in dispute because the very purpose of the request is to ascertain whether the answering party is prepared to admit or regards the matter as presenting a genuine issue for trial. The advisory notes observe that a party runs no risk of sanctions if the matter is genuinely in issue because sanctions are warranted only when there are no good reasons for a failure to admit.

M&G Polymers USA, LLC v. CSX Transp. Inc., Docket No. NOR 42123; *Total Petrochemicals & Refining USA, Inc. v. CSX Transp., Inc.*, Docket No. NOR 42121 (“*Total*”).

¹⁷ FRCP 36, Notes of Advisory Committee on Rules—1970 Amendment.

¹⁸ *Id.*

Although defendants' objections to market dominance requests for admission clearly are inappropriate under the FRCP, a slight difference in the Board's rules for sanctions has left some uncertainty in SAC proceedings. Under FRCP 37(c)(2), sanctions are available for failure to admit a "matter" that the requester later proves to be true, whereas under 49 C.F.R. § 1114.31(c), sanctions are available for failure to admit any "matter *of fact*." [emphasis added] The literal text of the Board's rule, which is narrower than that of FRCP 37(c)(2), does not appear to encompass the broader scope of requests for admission under the FRCP, which extends to matters of mixed law and fact.

The Board should clarify this situation by updating its rules to correspond more closely to the current FRCP. This would not expose the defendant to sanctions at the end of a case just because it lost a disputed market dominance claim. As FRCP 37 acknowledges, "the true test is not whether a party prevailed at trial but whether he acted reasonably in believing that he might prevail."¹⁹ A defendant that denies a request for admission on market dominance but then concedes the issue in its evidence is not acting reasonably. Determining whether a defendant reasonably believed it might prevail would not lengthen a SAC case because such determination occurs after a final decision.

Consultation Certifications. The Joint Carload Shippers have no objections to a rule requiring parties, before filing either a motion to compel or a motion to modify procedural schedule, to certify that they have consulted the other party(ies). But there must be an exception for situations where consultation is not practical due to time constraints. For example, an impending procedural schedule deadline may render the time required to consult with the other party and obtain a timely response impractical.

¹⁹ FRCP 37, Notes of Advisory Committee on Rules—1970 Amendment

V. Evidentiary Submissions: Standardization.

At pages 5-6 of the ANPR, the Board solicits comment on whether and how to standardize portions of the SAC evidence to reduce matters in dispute and expedite resolution. Specifically, the Board has proposed standardizing some unit costs by using the system average of actual railroad data. In many instances, however, such simplification has a potentially significant trade-off that could bake real-world inefficiencies into the operations of a theoretically more efficient SARR, thereby undermining a critical objective of the SAC analysis. This is a particular concern for SARRs that model segments of a rail network that are not represented well by system average costs. In most instances, the use of system average costs will work to the detriment of complainants.

Nevertheless, Messrs. Crowley and Mulholland have identified some candidates for standardization. Crowley/Mulholland V.S. at 16-17. But those candidates already are *de facto* standardized because complainants and defendants alike have settled into a common approach over time. Thus, even if the Board were to formalize those standards in this proceeding, such action would not facilitate more expedited resolution of SAC cases. *Id.* at 16.

The Board also has offered specific standardization proposals for G&A costs, MOW expenses, construction costs, locomotive acquisition costs, and wages & salaries. Messrs. Crowley and Mulholland address the merits of those proposals at pages 17 to 20 of their Joint Verified Statement.

To a certain extent, standardization of evidence for the sake of reducing complexity would be a change in direction for the Board. Any standardization must accept less precision as a trade-off for a less complex, costly and lengthy proceeding. Yet in several decisions over the past decade, the STB has trended away from standardization towards greater precision, but at a

greater cost in terms of time and money.²⁰ For example, the process for calculating revenue divisions for cross-over traffic has evolved from a quick and simple spreadsheet-based analysis to one that requires weeks to develop, compile and validate using an SQL database.

Crowley/Mulholland V.S. at 14-15 The real savings in time and money is associated with uncomplicating these methodologies, as opposed to standardizing unit costs.

Therefore, the Board should not attempt to standardize unit costs with the goal of reducing the complexity, cost and duration of SAC cases, unless it also reexamines truly complicated SAC analyses, such as the Average Total Cost (“ATC”) methodology for calculating cross-over revenue divisions. *Id.* at 15-16. Although the Board has sought greater precision through ATC, whatever imprecision existed in less complex alternatives was not biased, whereas the use of system-average unit costs will bake inefficiencies into the SARR almost uniformly to the detriment of complainants. The Board should evaluate whether ATC offers a sufficiently greater level of precision over prior methodologies to justify its time and resource requirements.

VI. Evidentiary Submissions: Other Ideas.

The Board, at pages 6-7 of the ANPR, has solicited comments on various general ideas concerning evidentiary submissions covering subjects such as motions practice, page limits, final briefs, software licensing, and the filing of public evidence. The Joint Carload Shippers address these issues both below and at pages 21 to 26 of Messrs. Crowley and Mulholland’s Verified Statement.

²⁰ See STB Ex Parte No. 657 (Sub-No. 1), *Major Issues in Rail Rate Cases*, slip op. at 24-39 (served Oct. 30, 2006) (adopting Average Total Cost methodology); Docket No. EP 715, *Rate Regulation Reforms*, slip op. at 19-21 (served July 18, 2013) (eliminating the original road property investments simplifications in simplified-SAC cases).

Motions Practice. The Board seeks comment on whether there are certain issues that could and should be resolved through interim rulings to narrow the scope of the case or to avoid evidentiary misalignment. The Joint Carload Shippers believe that evidentiary misalignment is a significant problem that could benefit from earlier resolution. That problem was on stark display in the *DuPont* case and has been repeated in subsequent cases involving carload traffic.

In those cases, the complainant used one methodology to develop its operating plan and the defendant employed a completely different methodology to develop a very different operating plan. This process differed from nearly every prior SAC case in which the defendant identified alleged flaws in the complainant's operating plan and made adjustments to correct for those alleged flaws. On rebuttal in prior cases, the complainant could defend its opening evidence; accept the defendant's adjustments; or correct errors in the defendant's evidence.²¹ Every option, however, involved the same basic operating plan, which enabled the Board to choose which parties' version of that same plan was superior.

In contrast, the defendants in more recent cases identified alleged flaws in the complainants' operating plans, but instead of attempting to correct those flaws, the defendants replaced the complainants' evidence with new operating plans created from scratch.²² Consequently, there were no "corrections" to the complainants' operating plans for them to accept, reject, or modify. To the extent the defendants raised legitimate problems with the complainants' opening operating plans on reply, complainants faced a dilemma. They could either accept the defendants' entire alternative operating plan, which contained many more

²¹ See *Duke Energy Corp. v. Norfolk Southern Railway Co.*, 7 S.T.B. 89, 100-01, 141, 175, 190 (2003) ("*Duke/NS*").

²² For example, in *DuPont*, the defendant identified and even quantified specific alleged deficiencies in the complainant's operating plan (e.g. missing trains and car classification counts). But rather than add these elements to the complainant's plan, which it could have done, the defendant created an entirely new competing operating plan.

different elements than just the alleged flaws in the complainants' plans, or they could devise and impose adjustments to their own operating plans from opening. When the complainants chose the latter approach, their adjustments were subjected to additional criticisms (and even a motion to strike) in the defendants' final briefs to which complainants had no opportunity to respond.²³ This set the parties along two very divergent paths that created an evidentiary misalignment and forced the Board into an "all-or-nothing" choice.

The ultimate consequence was that the parties were working from different--and in some ways incomparable--operating plan templates throughout the proceeding, contrary to the historical process followed in SAC cases. The Board has acknowledged that ordinarily the defendant would be required to correct the complainant's operating plan on reply, but in those cases, the complainants' plans were missing a critical element that left nothing for the defendants to correct.²⁴ Therefore, the Board held that the defendants could submit their own evidence. The result, however, was a misalignment of evidence that required the Board to choose between the two distinctly different operating plans without adjustments for the flaws identified by the other party. While the complainants identified flaws in the defendants' operating plans, some of which the Board acknowledged would cause it to reject those plans in other situations, the Board concluded that the parties' operating plans were not equally flawed, and thus selected the defendants' operating plans in whole, without any adjustments, because the complainants bore the burden of proof.²⁵

If the Board had required the defendants to correct alleged flaws in the complainants' operating plans, the adversary process would have produced a single operating plan in each case,

²³ *DuPont*, slip op. at 33-35 (served March 24, 2014); and *SunBelt*, slip op. at 6-8.

²⁴ *DuPont*, slip op. at 41 (served March 24, 2014); *SunBelt*, slip op. at 13.

²⁵ *DuPont*, slip op. at 44 (served March 24, 2014); *SunBelt*, slip op. at 13, 19.

with adjustments in each successive round of evidence that corrected the flaws identified by both parties in the other's methodologies. Instead, the Board was forced to choose between two heavily criticized and admittedly flawed plans without any corrective evidence from the other party that was tested through the adversarial process.

The Joint Carload Shippers submit that all parties would benefit from a process that identified and addressed this situation much earlier in the process, before the parties expended more time and millions of additional dollars. Rather than permit a defendant to create this evidentiary mismatch by presenting a completely different operating plan, the Board should require a defendant, who genuinely believes that it cannot "correct" the complainant's operating plan, to file a motion to dismiss the case. The motion should explain why the defendant cannot correct the complainant's evidence without creating a new plan. The Board then would decide whether that claim is accurate. Previously, the Board has suggested that this is the proper approach, although it declined to follow that approach in the *DuPont* case.²⁶

The Joint Carload Shippers offer two means by which the Board could implement this approach on an expedited basis. The first option is to require a defendant to file its motion to dismiss within 30 days after the complainant files opening evidence. The complainant would have 20 days to reply. The Board then would issue a decision within 30 days. During all of this, the procedural schedule would be held in abeyance. If the Board grants the motion to dismiss, it could grant the complainant 45 days from that decision to resubmit its opening evidence to correct the identified flaws, or its Complaint would be automatically dismissed. Once the complainant has resubmitted its opening evidence, the defendant would submit reply evidence within the amount of time remaining in the schedule for submitting reply evidence when it filed

²⁶ *Duke/NS*, 7 S.T.B. at 101, n. 20 (2003).

the motion to dismiss. If the Board denies the motion, the procedural schedule would resume and the defendant would submit reply evidence that corrects the alleged flaws in the complainant's operating plan within the time remaining in the schedule when it filed the motion to dismiss.

A major concern of the Joint Carload Shippers with this first option, however, is that defendants would have an incentive to file a motion to dismiss in every SAC case simply to garner additional time to prepare their reply evidence. This is because, even if its motion is denied, the railroad would receive 50 additional days (e.g. 20 days for reply plus 30 for STB decision). Certain safeguards are needed, therefore, to discourage frivolous or opportunistic motions to dismiss. Two possibilities come to mind. The Board could assess attorneys' fees against the defendant for the complainant's response to the motion to dismiss, which is similar to the remedy for improper failure to admit a request for admission. Alternatively, the Board could extend the rate prescription by an additional year to compensate the complainant for the unnecessary added cost and delay.

The second option to implement this "motion to dismiss" approach would eliminate the incentive for a defendant to file a motion solely to garner additional time. This option is similar to the first option, except for holding the procedural schedule in abeyance. The defendant still would file its motion to dismiss within 30 days after the complainant files opening evidence. The complainant would have the same 20 days to reply and the Board still would issue a decision within 30 days. But unlike the first option, the procedural schedule would not be held in abeyance during this time. Rather, the procedural schedule would be revised only if the Board grants the motion to dismiss, in which case, the complainant would receive 45 days to resubmit its opening evidence to correct the identified flaws, or its Complaint would be automatically

dismissed, and the defendant's reply would be due 60 days thereafter. If the Board denies the motion to dismiss, defendant must still file its reply evidence in accordance with the original procedural schedule. This will discourage defendants from filing a motion to dismiss unless it truly cannot "correct" alleged flaws in the complainant's evidence.

Although both approaches could lengthen the procedural schedule by a few months rather than shorten it, the overall effect would facilitate a more efficient and fair process than the current one which requires the parties to litigate, and the Board to decide, on the basis of misaligned evidence. In a proceeding as complicated as SAC, where the complainant bears the burden of proof but the defendant possesses most of the information and experience needed to carry that burden, this proposal is both a modest and reasonable precaution to prevent situations in which a single alleged flaw in the complainant's evidence could be fatal to its case. Otherwise, defendants will have the incentive to exploit gaps in one component of the complainant's evidence to justify developing a brand new operating plan which, although it may be feasible, also can be sufficiently gold-plated to ensure no rate relief under the SAC analysis. Finally, creating the proper disincentives to file opportunistic motions to dismiss will ensure that this process only applies in truly exceptional situations.

Rebuttal Page Limits. The Board seeks comments on the use of rebuttal evidence page limits to address a concern expressed by railroad stakeholders that the scope of rebuttal filings is often disproportionate to that of opening filings. This has been a common railroad refrain in several recent rate cases to infer that complainants are submitting improper rebuttal. But that comparison is illogical. Rebuttal evidence responds to the defendant's reply evidence, not to opening evidence. Messrs. Crowley and Mulholland provide several examples of recent SAC cases where railroads have used their reply evidence as a laboratory to introduce and test new

theories and analytical frameworks to which complainants must respond on rebuttal.

Crowley/Mulholland V.S. at 22-25. Therefore, a comparison against opening evidence cannot provide any insight into the proper length of rebuttal evidence.

Furthermore, even a comparison to the defendant's reply evidence has its limits. For example, Messrs. Crowley and Mulholland describe a recent situation where the vague single-paragraph reply evidence of the defendant required a 21-page rebuttal to address the true complexity of the subject matter. *Id.* at 25

The Board already has a procedural mechanism for addressing improper rebuttal evidence, which is to file a motion to strike. Defendants have used that mechanism in recent cases, sometimes successfully and sometimes not. The Board should continue to adhere to this process, which requires defendants to demonstrate that rebuttal evidence is improper, rather than assume a problem exists based on an inapposite comparison of the length of rebuttal evidence relative to opening evidence.

Finally, such an arbitrary attempt to impose page limits on rebuttal evidence will complicate the Board's job. The narrative evidence contains explanations for the complex work papers included with the narrative filing. The required explanations are greatest on rebuttal, when there is a need to navigate and address three rounds of work papers. An insufficient narrative will make work papers more opaque and require Board staff to expend more resources to review and understand the work papers. This proposal also is inconsistent with prior Board directives that require the parties to include more—not less—information in their narrative submissions. Crowley/Mulholland V.S. at 21-22.

Final Briefs. The Joint Carload Shippers urge the Board to reassess the current format for submitting final briefs, which serves very little constructive purpose at present except as an

opportunity for defendants to submit surrebuttal. The parties already submit a “Counsel’s Argument,” which essentially is their brief, as a distinct section in each round of evidence. Under the existing format, Complainants’ final briefs are little more than an abridged version of their rebuttal Counsel’s Argument, as there is nothing more for them to say in their briefs that has not already been said in rebuttal. Defendant’s final briefs, on the other hand, are an opportunity to respond to the rebuttal evidence without affording complainants any opportunity to challenge that response. If the Board is to retain final briefs at all, it should do so in a format that is useful to the Board and fair to the parties.

The Joint Carload Shippers offer two proposals that could be adopted independently or in tandem. The first proposal is to stagger the briefing schedule instead of receiving simultaneous briefs. This will allow the complainant, which has the burden of proof, the opportunity to respond to the defendant’s surrebuttal arguments. The second proposal is to limit briefing to specific subjects identified by the Board based upon its review of the evidence. This would maximize the utility of final briefs to the Board by ensuring that the parties focus their efforts on those issues where the Board actually has substantive questions.

Software Licensing. The Board has asked whether it should require parties who use software that is not publically-available to provide a temporary license to the opposing party. This is closely related to the software issues discussed in Part III, above. As discussed in that section, the Joint Carload Shippers object to the use of non-public software at all. However, if the Board rejects those arguments, it at least should require the party introducing the software to provide a license to the other party. Moreover, that license should be for the same version and functionality of the software that the party has used to develop its evidence.

Public Evidence Filings. The Joint Carload Shippers support the idea of staggering the public and highly confidential versions of SAC evidentiary filings. The preparation of SAC evidence is an enormously time-consuming endeavor in a compressed period of time. That time is artificially compressed even further by the need to simultaneously file public versions, because that means the highly confidential version must be completed sufficiently in advance of the filing to have adequate time to prepare the public version. While technology has made that job easier than it once was, even a single extra day to submit public versions would alleviate much of the pressure associated with preparing two sets of filings simultaneously. Moreover, it will reduce the risk of inadvertent disclosures of confidential information.

VI. Interaction with Board Staff.

The Board has solicited comment on various means by which greater and more frequent interaction between the parties to a SAC case and Board staff would be beneficial. ANPR at 7. The Joint Carload Shippers believe greater interaction through technical conferences and written interrogatories could have several valuable benefits spanning many of the other subjects in the ANPR.

First, the Board could require pre-trial conferences with Board staff that serve many of the same functions as FRCP 16. Indeed, FRCP 16(a) identifies the following five purposes, all of which dovetail with the objectives of this proceeding:

- expediting disposition of the action;
- establishing early and continuing control so that the case will not be protracted because of lack of management;
- discouraging wasteful pretrial activities;
- improving the quality of the trial through more thorough preparation; and
- facilitating settlement.

This would require that Board staff conduct meetings with the parties to a SAC case early in the process and periodically thereafter, as requested by the parties, to address issues that may arise that affect a party's ability to prepare evidence in accordance with the procedural schedule. The staff could use these meetings to be informed on the progress of the parties in developing evidence, to identify early in the process issues that threaten to delay the procedural schedule, and potentially to preempt some issues and facilitate resolution of others. These meetings also could provide staff with valuable insight into the process of developing SAC evidence that largely remains unseen except by the parties themselves today. That enhanced understanding may spur additional ideas on how to expedite SAC cases.

Second, the Board should make greater use of technical conferences during its review of the parties' evidence. SAC cases are enormously complex and, despite the due diligence of the parties, the Board staff may need to ask questions to understand the evidence or how to harmonize or reconcile different components of the evidence. The Board already has begun using technical conferences for this purpose in recent SAC cases, but not always in the most efficient manner. For example, in the *Total* case, the Board only provided very broad topics in advance of the technical conference. At the conference, however, staff had very specific questions as to what pages of the evidence contained certain information, and precisely where in the vast workpapers support for that specific information resided. Given the volume of evidence in combination with the elapsed time since filing that evidence, it took hours to find the answer to just a single question. Both parties had similar experiences. Many of the questions asked could have been provided prior to the conference so that the parties could have arrived at the conference with answers in hand, and prepared visual aids as needed. Alternatively, the Board staff could have submitted written interrogatories to which the parties could have submitted

written responses, in lieu of a technical conference. Written interrogatories are a common practice used by other federal agencies, such as the Federal Energy Regulatory Commission, and they have the advantage of constituting part of the case record.

Respectfully submitted.

A handwritten signature in black ink, appearing to read "Jeffrey O. Moreno".

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Dated: August 1, 2016

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 733

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Expediting Rate Cases

Verified Statement

Of

Thomas D. Crowley
President

And

Robert D. Mulholland
Vice President

L.E. Peabody & Associates, Inc.
On Behalf Of

The American Chemistry Council,
the Dow Chemical Company,
and M&G Polymers USA, LLC
(collectively the "Joint Carload Shippers")

Due Date: August 1, 2016

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LIST OF EXHIBITS

<u>EXHIBIT NO.</u>	<u>EXHIBIT DESCRIPTION</u>
(1)	(2)
1	Statement of Qualifications of Thomas D. Crowley
2	Statement of Qualifications of Robert D. Mulholland
3	DuPont Discovery Requests

I. INTRODUCTION

We are Thomas D. Crowley and Robert D. Mulholland, economists and President and a Vice President, respectively, of L. E. Peabody & Associates, Inc., an economic consulting firm that specializes in solving economic, transportation, marketing, financial, accounting and fuel supply problems. Mr. Crowley has spent most of his consulting career of over forty (40) years evaluating fuel supply issues and railroad operations, including railroad costs, prices, financing, capacity and equipment planning issues. His assignments in these matters were commissioned by railroads, producers, shippers of different commodities, and government departments and agencies. Mr. Mulholland has also spent most of his career of over twenty (20) years evaluating fuel supply issues and railroad operations, including railroad costs, prices, capacity and equipment planning issues. He has conducted this work for shippers, producers, railroads, and government departments and agencies. A copy of Mr. Crowley's credentials is included as Exhibit No. 1 and a copy of Mr. Mulholland's credentials is included as Exhibit No. 2 to this Verified Statement ("VS").

We have been requested by Counsel for The American Chemistry Council, the Dow Chemical Company, and M&G Polymers USA, LLC (collectively the "Joint Carload Shippers") to review and comment on the Surface Transportation Board's ("STB" or "Board") June 16, 2016 Advance Notice of Proposed Rulemaking ("ANPR"). Through this ANPR, the Board proposed assessment of procedures available to the parties in litigation before courts to expedite such litigation, and potential application of any such procedures to rate cases before the Board. The Board further proposed to assess additional ways to expedite rate cases involving the stand-alone cost ("SAC") test.

The results of our review are summarized in the remainder of this VS and accompanying Exhibits. Specifically, our comments are organized under the following topical headings:

II. Discovery: Standardized Requests and/or Disclosures

III. Evidentiary Submissions: Standardization

IV. Evidentiary Submissions: Other Ideas

II. DISCOVERY: STANDARDIZED REQUESTS AND/OR DISCLOSURES

Discovery requests are developed to gather information similar to what was presented and used in prior maximum reasonable rate cases. While many discovery requests in recent cases have been repetitive, they have changed somewhat from case to case in response to new information and knowledge gained in successive cases.¹ Although many requests could probably be standardized, there are likely to be unforeseen circumstances that will require the use of information that is not covered by a standard request. If the Board were to limit discovery to a group of pre-determined requests, these requests could become obsolete as new arguments and presentations are made in future cases, and as railroads develop new models to capture and store information in the normal course of business. Therefore, attempts to standardize a set of requests could result in the production of insufficient and/or archaic materials. Furthermore, arguments regarding changes to standard requests and/or whether new requests should be added in the future could bog down the process and make it less efficient than it is at present.

However, there are opportunities for significant efficiency improvements related to implementing standardized production parameters for certain critical discovery materials. Targeting a few specific areas would be far more beneficial than trying to develop a one-size-fits-all set of universal requests, because it would enhance complainants' ability to reliably

¹ Per the Board's request at page 4 of the ANPR, we are including the discovery requests DuPont served on NS in *E. I. DuPont de Nemours and Company v. Norfolk Southern Railway Company*, Docket No. NOR 42125 ("*DuPont*") as Exhibit No. 3 to this VS to provide examples of common discovery topics in carload shipper rate cases. Note that the discovery requests in subsequent carload cases contained additional requests not included in these documents, but because those subsequent cases are ongoing we are not submitting those requests in this proceeding.

develop Opening evidence within the procedural schedule. The best opportunity for efficiency improvements is traffic and revenue data production.

A. TRAFFIC AND REVENUE DATA

Although the traffic and revenue data requested by complainant shippers has not changed significantly over the last several cases, the format in which it has been provided has varied significantly from case to case. In all recent SAC cases, the railroads have produced traffic data in a series of tables (flat files) that have been disassembled from their original relational format (within a database). Production of terabytes of individual flat files requires the complainant to first restore each table into a proper database file and then subsequently rebuild the relational database from scratch. The design of these relational databases is something to which each railroad has devoted years fine-tuning and perfecting. Yet, a complainant is expected to undertake this database building process *during the opening phase of a rate case before any evidence can be developed*. Given that the provided flat files already exist within a relational database where all fields and tables are linked and keyed appropriately, this data should be provided in an “intact” and “relational” database format.²

The railroads may argue that their production of traffic data in disparate flat files is required to pare down the data tables to ensure that confidential data which are irrelevant to the case are not provided. This is not true. Removal of non-essential confidential data does not require data tables to be isolated and removed from other related tables. Nor does it require

² Currently, it is not clear what combination of hardware and software each railroad uses to manage its databases. However, it has been established that some of the railroads’ databases currently exist in Client Server (PC) format that is easily deliverable. To the extent that any railroad databases require conversion from mainframe or older PC formatting, the Board should hold a technical conference to establish the best practices for converting mainframe databases to Client Server databases for use in rate cases.

removal of “key” fields required to link corresponding data tables. It merely requires the deletion of select fields and/or records of data from the extant tables, and perhaps removal of some non-essential tables from the database.

For example, if the complainant only needs 50 data fields from the railroad’s waybill table, 30 fields from the railroad’s car event table, and 70 fields from the railroad’s train event table, the railroad could delete the non-essential data fields as it does today, but leave the linked tables in the database and produce the entire database rather than just the isolated tables.³ If the complainant only needs two years of historical data for traffic moving through a select geographical region, the railroad could delete the non-essential data records as it does today, but leave the tables in the database and produce that database rather than just the isolated tables. If the complainant only needs six related tables in the railroad’s traffic database, the railroad could delete the non-essential data tables and still produce a smaller database than the one it uses in the normal course of business without having to produce only individual data tables (so long as it left all tables and fields required to link the essential data.)

Furthermore, to develop the redacted flat files the railroads produce in rate cases, the railroads rely on the existing links among the tables in their databases. Specifically, in order to provide waybill, car movement and train movement data only for railcars moving through select states, the railroads must first identify the waybills associated with traffic moving through only

³ Note that in some cases, train event data may be contained in several tables rather than just a single table. To keep this discussion on a high-level, we have generally referred to the three most critical data elements which may be stored in different ways in the railroads’ databases. Whether the railroads store the critical data in three, four, or six related tables (or more) is irrelevant. The key point is that the entire database should be provided rather than the individual tables.

certain states based on the linked car and train movement data, which provides specific route information for the shipments included in the waybill table.

The complainants' database development activities that precede their development of opening evidence are further complicated because the content and structure of the provided flat files changes from case to case. In nearly every case (even in cases involving the same railroad that occur in rapid succession) the database formats and structures are different from the prior cases. This occurs because the disassembly process used by the railroads and railroads' consultants to develop discovery materials is partially manual in nature. If the traffic and revenue data were provided in complete functioning databases (limited to the specific records and fields required), and linked in the manner required to correlate data contained in the various tables, and supplemented with complete decoders, complainants could reliably develop SAC evidence within the procedural schedule.

The best option for expediting rate cases is to simply require the railroads to provide the databases containing their traffic and revenue data in the same format used by the railroads in the normal course of business, i.e., provide intact relational databases housing tables that are linked and keyed appropriately.

Another option suggested as a means to standardize data in rate cases is having the Board annually collect waybill and other traffic data customarily used in SAC cases. The STB would then provide the standardized information to the complainant upon the filing of a complaint and the signing of protective orders. If the Board does not require the railroads to provide intact relational databases, this would be the second best option to improve the process.

The Board expressed concern “about how to standardize the data and the burdens collection of the data would impose.”⁴ There is no burden when it comes to collecting railroad waybill data for use in rate cases because the railroads already gather, sort, and produce waybill information in a standardized format to the Board on an annual basis for development of the annual waybill sample. Chapter 49 of the Code of Federal Regulations (“49 CFR”) requires railroads to sample information for all line-haul revenue waybills terminated on their lines if they terminate at least 4,500 revenue carloads in any of the three preceding years, or if they terminate at least 5 percent of the revenue carloads terminating in any state in any of the three preceding years. These filing requirements ensure that Class I railroads already collect the required waybill information for the samples.

49 CFR also requires the railroads to file the information in a specific format. Section 49 CFR 1244.4(c)(1) requires the railroads to file the data in a form consistent with the standards and format specified in Statement No. 81-1, *Procedure for Sampling Waybill Records by Computer* (2009 edition), issued by the STB (“*Sampling Procedures*”). Most of the data collected in the waybill sample is also data sought and used in SAC cases.⁵

The waybill sampling procedures also require processing all waybill records as part of the waybill sampling process.⁶ Therefore, if the railroads are following the Board’s prescribed procedures as stated in the *Sampling Procedures*, they have already gathered and formatted the

⁴ See, ANPR at p. 4.

⁵ Including but not limited to: Waybill date; Number of carloads; Standard Transportation Commodity Code; Billed and actual weights; Origin and destination locations; Interchange locations and railroads; Contract indicator; Line-haul revenue; Fuel surcharge revenue; and Movement miles.

⁶ Section A of the *Sampling Procedures* states that: “[t]he waybill records to be used as a frame for this study shall include all waybills and other documents used in lieu of waybills to authorize movement of revenue freight and/or used as a basis for settlement. Apply the sample to all waybill records.”

required waybill data as part of their submission of the waybill data. While some additional information may be required for use in a SAC presentation, such as specific contract numbers and customer information, it should not be a great burden to add to the existing data collected by the railroads since it is already captured on the railroads' waybills.

Even if the railroads had to start from scratch in collecting and standardizing the data, the Board has already determined that the burden is minimal. The Office of Management and Budget requirements and Paperwork Reduction Act of 1995, 44 U.S.C. 3501 require the STB to estimate the average annual hourly burden for filing the information included in the waybill data. *Sampling Procedures* indicates the Board estimates it takes only 75 hours to prepare the waybill data for filing. This is less than two standard work weeks to gather, standardize and produce the required data.

Furthermore, because the railroads' waybill data is housed in relational databases with functioning links, there would be little burden associated with providing the car and train movement data linked to the waybill data within those databases. Rather than providing just the waybill table to the Board, the railroads would provide the intact database containing waybill data along with car and train movement data.⁷

The Board's concern regarding any burden this data collection activity may impose on the railroads must be balanced against the burden imposed on every complainant that brings a rate case before the Board. Complainants are heavily burdened with developing a relational database and all required links before developing evidence in every rate case. Furthermore, the railroads practice of providing isolated flat files imposes a burden on the railroads themselves, as

⁷ Along with any other data critical to rate cases, such as delay data and network tables identifying rail stations (nodes) and segments (links) on the incumbents' systems.

they (or their consultants and legal counsel) must expend significant resources responding to weeks (and often months) of follow-up questions, including time spent developing supplemental productions to fill in the inevitable gaps. Providing the existing links would require less effort on the part of the railroads than they currently expend.

The Board has recently recognized that the deck is stacked against shippers in developing rate case evidence. Specifically, Vice Chairman Miller stated in her concurring opinion in STB Docket No. NOR 42130, *SunBelt Chlor Alkalai Partnership v. Norfolk Southern Railway Company* (“*SunBelt*”), Decision Served June 30, 2016 at pp. 42-43:

I have concerns about the complexity of the test itself and the fact that this complexity causes the process to be cost- and time-prohibitive.... There can be no doubt that the reason the Board has seen a near total absence of rate cases in recent years is because the process is simply not accessible to most shippers.⁸

The number one contributing factor to the cost and complexity of rate cases is the requirement for complainants to reconstruct a functional traffic and revenue database from the disparate parts provided by the railroads in discovery. This critical process must be done in short order, and any anomalies not accounted for in the database compilation process have the potential to undermine the development of complete evidence.

B. ADDITIONAL DISCOVERY ITEMS

The Board identified several specific items that may be candidates for standardized production at the outset of a case. If discovery requests are standardized, measures must be taken to ensure that they stay current with advancing technology. Introduction of new technology happens regularly and railroads routinely update their in-house technology to improve efficiency and functionality. Standardized requests must be easily amendable to

⁸ See, *SunBelt* at pp. 42-43.

incorporate updated technology and innovations in the industry to guard against the production and use of outdated data and/or methodologies in rate cases after the industry has developed superior models. We discuss each item identified by the Board below.

1. Timetables and Track Charts

Although the key data elements included on track charts and timetables has not changed over time, standardized discovery requests could result in delivery of obsolete and/or inefficient data in the near future. For example, a standardized discovery request for track profile data written today may request hard copies (pdf files) of track charts. However, at least some of the Class I railroads are currently utilizing new GPS technologies and relational databases that are capable of producing more flexible and user-friendly media containing the same key data elements.⁹ Standardized requests must account for inevitable updates in coming years.

2. Authorizations for Expenditure (“AFE”)

A standardized AFE request could be developed to include the key elements contained on the documents. However, the request would need to be structured to allow for some fine tuning to reflect special circumstances around particular geography. In addition, as public-private partnerships (“PPP”) become an increasingly common instrument for infrastructure delivery, the

⁹ For example, CSXT has developed and uses a relational database containing track chart and other related engineering data in multiple linked tables. A complainant gained knowledge of this database through a web search that uncovered a public document describing the process being used by CSX to consolidate data from legacy systems into a new database using current technology. Because track charts had historically been provided in hard copy (pdf file) format in rate cases, the complainant had to develop a new document request to identify the CSXT database by name to ensure it was provided with the most responsive information. Had the complainant not specifically identified the database in its document requests, it would likely have received the track charts in the standard hard copy format. The complainant was able to use that powerful database to dramatically reduce the time required to develop several components of its opening evidence that had historically demanded thousands of man hours and several weeks to compile.

requests may need to be adjusted or augmented to the extent the AFE process is modified to reflect sharing of proposed expenses through innovative financing structures or public funding streams such as state infrastructure banks (“SIB”) and matching programs.

3. Grade, Curve, and Profile Data

The same issues discussed above with respect to track charts and timetables hold for other engineering data produced in discovery. Although the key data elements are unlikely to change significantly, the data collection and storage activities of railroads are likely to change significantly and continually. This would need to be accommodated moving forward.

4. Wage Forms A&B

Like several above items, the key data elements are unlikely to change significantly, but the standard requests would need to be structured to accommodate technological advances.

5. Geographic Information System (“GIS”) Data

GIS data systems are continually improving and will likely be ever more intertwined with other databases maintained by the railroads. For example, latitude and longitude (“lat/long”) data will likely be associated with car and train events to allow for real-time tracking and mapping of individual shipments. This kind of enhancement would be extremely useful to all parties in a rate case, including the Board. A standard request would need to be flexible to account for emerging technology.

6. Forecasts

Forecasts are a good candidate for standardized requests, however, forecast-related discovery requests are simple to prepare and are not controversial.

7. Contracts

Contracts are another example of an item for which imposition of standardized discovery requests could backfire if not carefully crafted to allow a degree of flexibility. Contracts are typically provided in hard copy (pdf file) format, and must be manually reviewed and key data from them must be manually entered into a spreadsheet before data analysis can begin. This is a time consuming process that has great potential to introduce human error into the body of evidence. As the railroads develop ever more comprehensive data tracking and storage solutions, it is likely that a centralized contract database will come into existence. It would be inefficient and costly to continue to rely on hard copies when a suitable database exists.

C. NEW SOFTWARE

The Board seeks comment on whether disputes on appropriate software could be avoided by requiring parties to disclose any new software not available to the general public which it plans to use by the close of discovery. This proposal would not solve the problems caused by the introduction of new software. The biggest problem with the introduction of new software to a case is that there is inevitably a learning curve associated with using any software package. If one party introduces a new software package, it places the other party at a distinct disadvantage because the procedural schedule is limited. Having to learn a new software package before evaluating the other party's evidence, while simultaneously developing an argument and supporting narrative, is not conducive to meeting the Board's larger objective of reducing the cost and complexity of rate cases. In fact it has the opposite effect.

III. EVIDENTIARY SUBMISSIONS: STANDARDIZATION

The Board identified standardized unit costs as an example of how evidentiary submissions could be streamlined, including using unit costs based on “actual railroad data” and on “prior rate cases”. Using unit costs from prior rate cases seems to be at odds with recent Board decisions regarding the simplified SAC (“SSAC”) model. The SSAC test is offered to shippers as a less complicated alternative to a full SAC analysis. Initially, the SSAC test used averages of previously decided full SAC cases to develop estimates of select components, including road property investment (“RPI”) costs. However, in STB Docket No. EP 715,¹⁰ the Board decided that RPI costs in SSAC cases must be developed based on the full SAC model because it felt the SSAC process should be more precise.

We will modify the analysis in Simplified-SAC proceedings to require a full RPI presentation. The complete removal of the limit on relief in Simplified-SAC cases warrants a more exact methodology, and the increased cost of developing a full RPI analysis is more than offset by the increase in the relief available. Furthermore, carriers have identified some valid concerns about the adequacy of the rolling average RPI and its ability to represent fixed costs accurately. For instance, actual costs may vary greatly from the averages, depending on location, such as differences in land value and construction costs between urban and rural areas. These concerns outweigh the shippers’ argument that the RPI simplification has a minimal effect on accuracy.¹¹

The Board’s suggestion to use averages based on prior rate cases in this proceeding would make full SAC analysis less precise, which runs counter to the Board’s recent actions and logic regarding SSAC.

¹⁰ See, STB Docket No. EP 715, *Rate Regulation Reforms*, Decision served July 18, 2013. (“EP 715”)

¹¹ See, EP 715, p. 20.

A. SIMPLICITY VERSUS PRECISION

Standardizing certain unit costs based on system average information reported by the Class I railroads in their Annual Report Forms R-1 and other reports should only be considered in tandem with other adjustments. The idea seems to be that it would be worth giving up some precision as a trade-off for a simpler process. This is a shift from the Board's recent regulatory action.

Take, for example, the evolution of revenue divisions on cross-over traffic in rate cases. Before *Major Issues*,¹² revenue divisions were derived based on simple formulae that relied on distance and terminal services (whether the affected railroads originated, terminated or interchanged the shipments). It could be completed in a single level of a single spreadsheet in a day or two.

In *Major Issues*, the Board adopted the Average Total Cost ("ATC") formula,¹³ which dramatically complicated the calculation and required calculation of each shipment's variable cost and each shipment's fixed cost contribution, which requires development of density data for each SARR shipment for every segment of track it traverses both on the SARR and off the SARR on the incumbent's system. Since *Major Issues*, the formula has been complicated even more through evolutionary changes regarding how contribution above variable cost must be allocated. In *EP 715*, the Board formally adopted Alternative ATC.

The Board is adopting its proposal to change the revenue allocation approach used to allocate revenue from cross-over traffic. The total revenues from each portion of the cross-over traffic movement will be allocated in proportion to the average total cost of the movement on and off-SARR. But if the revenue allocation to the on-SARR (or off-SARR)

¹² See, STB Ex Parte No. 657 (Sub-No. 1), *Major Issues in Rail Rate Cases*, slip op. at 24-39 (served Oct. 30, 2006).

¹³ *Id.*, at pp. 24-39.

segment would result in revenues falling below URCS variable costs for that segment, the revenue allocation to the on-SARR (or off-SARR) segment would then be raised to equal 100% of the defendant's URCS variable costs of providing service over that segment.¹⁴

ATC is designed to meet that goal and to allocate revenue in accordance with existing economies of density (i.e., in accordance with the relative average total costs of providing service). Alternative ATC follows that approach, but with a modest adjustment only as needed to ensure that the revenue allocation does not drive the allocation below the variable cost of providing service over a particular segment. In our judgment, alternative ATC therefore does a superior job of allocating revenues in accordance with economies of density than modified ATC.¹⁵

Here, after notice and comment, we adopt a version of ATC that better approximates the appropriate revenue distribution, and any argument that a change could adversely affect either shippers or carriers does not override our concern for reaching the proper outcome in rate cases.¹⁶

Revenue division calculations are now calculated using complicated SQL code because Microsoft Excel is not powerful enough to make the calculations efficiently for the volume of data records that must be processed in an average rate case. This part of the SAC presentation has evolved from a quick and simple spreadsheet-based analysis to an analysis that takes weeks to develop, compile and validate. Furthermore, it makes evaluation more difficult for Board staff because knowledge of SQL code is required in addition to knowledge of Excel. All of this was done in the name of being more precise.

The use of system average "actual railroad data" in lieu of SAC evidence developed on a case-by-case basis could bake some real world inefficiencies into the theoretically more efficient SARR.¹⁷ In addition, although standard averages may lead to some level of predictability,

¹⁴ See, *EP 715*, p. 30.

¹⁵ *Id.*, p. 32.

¹⁶ *Id.*

¹⁷ It also seems contradictory to the intent of *Coal Rate Guidelines*, which (at page 543) indicates shippers would have broad flexibility to develop the least costly, most efficient plant and operations.

Complainants often utilize segments of the railroad system that are not well represented by system average costs.

Taking steps to make unit cost development simpler at the expense of precision, without making similar adjustments to the truly complicated SAC analyses (i.e., revenue divisions) is penny wise and pound foolish. Imputing the Class I railroads' system-wide inefficiencies into theoretically highly efficient stand-alone railroad's costs may only be acceptable if the Board were to also simplify the calculation of stand-alone revenues through the use of a simplified formula such as the Modified Mileage Block ("MMB") or Modified Straight Mileage ("MSM") prorate procedures. Only then would the foregone precision be balanced by truly simplified procedures. Without such a tradeoff, however, the use of inherently inefficient unit costs derived from a railroad's regulatory filings would bias the results against shippers.

B. STANDARD UNIT COSTS ARE NOT NEEDED FOR NON-CONTROVERSIAL ISSUES

Unit costs could likely be standardized for some non-controversial operating expense components. Major unit cost items where a defendant's actual data is typically used without contention include salaries and wages, locomotive lease rates (if available), locomotive servicing costs, railcar lease rates (if available), and cost per mile for most non-labor MOW components. However, the approaches used by complainants for these items have been consistent and accepted by defendants in recent cases. Therefore, while standardization of these items may be relatively easy, it may not significantly improve expediency.

Cost assumptions for travel expenses and outsourced services, which typically are sourced from public studies, could theoretically be standardized, as could some items based on data for a non-defendant railroad or combination of railroads, like fringe benefits ratio and

insurance percent of revenues. However, choosing the appropriate railroads from which to develop the data would require special studies and would likely be contentious.

Furthermore, even if unit costs for the items listed above could be standardized using a special study, they would change over time and require updating. It would be more prudent to continue developing these costs on a case-by-case basis.

C. SOME UNIT COSTS MUST REMAIN CASE-SPECIFIC

Unit cost items that cannot be easily standardized include materials and supplies (“M&S”), locomotive maintenance, and joint facilities rates. M&S price inputs are based on the most current market prices. Locomotive maintenance expenses are usually based on a defendant’s proprietary maintenance agreements. Joint facilities rates are based on negotiated rates for specific segments of track and services.

D. DISCUSSION OF SPECIFIC ALTERNATIVES LISTED IN THE STB ANPR

The Board identified several specific items that may be candidates for standardization.

We discuss each item below.

1. G&A as a Percentage of SARR Total Revenue or Based on The SARR’s Traffic Levels

Although a standardized model for general and administrative (“G&A”) costs could reduce the level of time and effort required, this idea would be difficult to develop and implement. G&A costs may be driven by factors other than traffic and revenue levels. For example, a short, coal only railroad like the stand-alone railroad (“SARR”) presented in *Western Fuels Association, Inc. v. BNSF Ry.*, STB Docket No. 42088, served Sept. 10, 2007

(“*WFA/Basin*”)¹⁸ would have a substantially different G&A mix than a large multi-commodity railroad like the SARR presentation in *Total Petrol Chemicals & Refining USA, Inc. v. CSX Transportation Inc.*, STB Docket No. 42121 (“*TPI*”)¹⁹ or *DuPont*.²⁰ Most of the contention around G&A costs has typically involved headcounts, so headcounts (or a “people per” metric) might be the focus of a percentage.

However, the drivers behind headcount vary by functional area and vary exponentially based on the size of a SARR (a smaller SARR requires more “people per”). Therefore, there would need to be a graduated scale developed, which would require special studies and could be contentious. Another problem with a “people per” metric approach is that if data for existing railroads were used in the development of the metric, the metric would be influenced by the peculiarities and inefficiencies of existing railroads brought about by consolidation and legacy operations. This would run counter to the notion of a least-cost, most-efficient SARR.

2. Adopt One Party’s Entire G&A Evidence Over The Other

This idea is problematic because there are components within G&A that do not directly relate to each other. For example, a party may develop an appropriately supported number of accountants for a SARR but overstate the number of policemen without support. This idea could

¹⁸ See, *WFA/Basin* at page 43 which shows a total of 39 G&A personnel, of which approximately 16 percent are executive management and board of directors, 39 percent are finance and accounting, 19 percent are law, safety and human resources, 5 percent are marketing and 21 percent information technology.

¹⁹ See, *TPI* Rebuttal (Publicly Available) at page III-D-52. *TPI* included 348 G&A personnel, including approximately 10 percent executive and board of directors, 31 percent finance and accounting, 21 percent law, 17 percent marketing and 21 percent information technology.

²⁰ See, *DuPont* Reply (Publicly Available) at pages D-73 to D-162. The Board accepted virtually all of NS’s G&A staff, which consisted of approximately 800 staff members, and had a mix of approximately 2 percent executive management and board of directors, 36 percent finance and accounting, 27 per law, safety and claims, 25 percent marketing and 10 percent information technology.

only work if the prior idea of a percentage or “people per” metric was accepted and developed, making the development of headcounts straight-forward and non-contentious.

3. Develop MOW Expenses by Developing a General Unit Cost by Dividing MOW Operating Costs by The Trailing Gross Ton Miles Found in The R-1 Multiplied by The General Overhead Ratio Found in The Board’s Uniform Rail Costing System

This idea could have merit and could result in a more standardized methodology for calculating maintenance of way (“MOW”) expenses. For example, all gross-ton-mile (“GTM”) driven costs could be calculated together, all track mile driven costs could be calculated together, etc. However, the number of MOW staff and equipment counts, which historically are two contentious items, may be difficult to represent in a standardized MOW model.

4. Standardize Construction Costs Using R-1 Data or Carriers’ Depreciation Studies To Develop Cost Per Track Mile

As discussed above in this Section III, this would be a departure from recent Board direction as it relates to rate cases involving the SSAC model. Using average Annual Report Form R-1 (“R-1”) data rather than developing actual construction costs would impose system average costs on all systems, regardless of their physical plant or the geography over which they are laid. A shipper situated on a low density single track segment in the plains could be forced to incur construction costs associated with a more costly average rail line, which would reflect varying elevations and more track miles per route per mile.

5. Standardize Locomotive Acquisition Costs Using Data from The R-1 Reports (Schedule 710S) And The Carriers' Periodic Depreciation Studies

Because operating leases are the most economical way to acquire locomotives, the Schedule 710S information, assuming it exists, would need to be converted to a lease rate for use with a SARR.

6. Use Wage Forms A&B to Standardize Wages And Salaries

Wage Forms A&B have been consistently used for non-executive wages and salaries in recent cases because this information provides the detail needed to assign salaries to specific job functions and specific levels of responsibility. The level of detail needed to assign salary data to railroad job functions and levels does not exist publically. Therefore, Wage Forms A&B could be used to develop standardized non-executive wages and salaries. Executive salaries, which vary depending on the size of a railroad, are available from public sources and should be developed on a case by case basis depending on the size of a SARR.

IV. EVIDENTIARY SUBMISSIONS: OTHER IDEAS

The Board stated that “many stakeholders expressed concern that the scope of Rebuttal filings is often disproportionate to that of opening filings and that final briefs are often more akin to surrebuttal than a summary of key issues.”²¹

The Board specifically requested comment on whether putting a page limit on Rebuttal evidence should be considered. In so doing, the Board pondered whether it should “more strictly enforce the evidentiary standard set forth in [*Duke*] which requires that the complainant ‘must present its full case-in-chief in its opening evidence’.”²² The Board also suggested the possibility of implementing a Rebuttal page limit pegged to the length of opening evidence.

As a threshold matter, any reduction in Rebuttal narrative scope or length will make the Board’s job harder, because it will necessarily make the related workpapers more opaque to Board staff. The narrative is critical because it provides explanation for the very complex workpapers included in the parties’ filings. Without sufficient narrative, the Board will need to invest more resources into workpaper review. In fact, this proposal directly contradicts prior Board directives requiring the parties to include more—not less—information in their narrative submissions. Specifically, the Board recently restricted the parties from including any narrative in their workpapers and instructed the parties to include all relevant text in the narrative submissions.

No narrative information/argument should be included in the exhibits or the workpapers. All narrative information/argument should be consolidated and confined to the narrative and should be submitted in Microsoft Word.²³

²¹ See, ANPR at p. 6.

²² *Id.*

²³ See, *Consumers* July 10, 2015 Decision, General Procedure Number 5.

Restricting Rebuttal length will force this crucial information back into the workpapers and exhibits, where it less accessible to the Board. In the same decision, the Board advised the parties that:

Each round of evidence should be able to stand on its own, and not merely reference evidence from prior rounds of evidence.²⁴

This directive is at odds with the notion of a limited length Rebuttal. The reason for lengthy Rebuttal filings has nothing to do with complainants failing to present their full cases in chief in Opening. It results from the tactical approaches recently employed by the railroads in which the railroads disclose new information and raise new arguments and theories in Reply to which the complainant must respond in Rebuttal. When this happens, the complainant is thrust into a defensive position on Rebuttal. It must not only support its opening case-in-chief, but it must also respond to new claims made by the defendant railroad on Reply.

For example, when complainants DuPont and SunBelt prepared their opening evidence in recently decided rate cases, no party in any previously decided SAC case had included a car classification and blocking analysis as part of its operating plan. The fact that the complainant's traffic was carload rather than unit train traffic did not make the case materially different from all prior SAC cases from a SARR operations perspective, because many SARRs in previously decided SAC cases included significant volumes of carload traffic in their traffic groups as well.²⁵

²⁴ *Id.*, General Procedure Number 4.

²⁵ *McCarty Farms, Inc. v. Burlington Northern, Inc.*, 2 STB 460 (1997) “*McCarty Farms*”, *FMC Wyoming Corp. v. Union Pacific R.R. Co.*, 4 STB 699 (2000) “*FMC*”, *Otter Tail Power Co., v. BNSF Ry.*, STB Docket No. 42071 (STB served Jan. 27, 2006) “*Otter Tail*”, *AEP Texas Northern Co. v. BNSF Ry.*, STB Docket No. 41191, slip op. (STB served Nov. 8, 2006)

Although the SARR only moved the carload traffic short distances in overhead trainload movements in three (3) of those cases (*Otter Tail*, *AEP Texas* and *AEPCO*), the SARR handled the carload traffic in the same manner as the incumbent railroad in the other two (2) cases (*McCarty Farms* and *FMC*). Moreover, in *McCarty Farms* and *FMC*, neither the shipper nor the railroad included evidence regarding a detailed classification and blocking plan associated with building the SARR trains. Instead, both the complainant shipper and the defendant railroad simply acknowledged blocking and switching would occur and only provided rough estimates of the number of railcars blocked or switched. (*McCarty Farms* at 493-494 and *FMC* at pages 792-793).

By using the real-world train operations as the basis for the SARR operating plan, the complainants in *DuPont* and *SunBelt* adhered to the precedent and met the same burden of proof all prior complainants had met, because all parties had tacitly accepted the premise that the defendant's real-world car classification and blocking plan was implicitly reflected in the railroad's real-world train operations. However, in *DuPont* and *SunBelt*, the defendant railroad (Norfolk Southern Railway "NS") submitted arguments on Reply that a SARR-specific classification and blocking plan must be developed and entered into the evidence. This was not an argument rooted in precedent—it was an issue of first impression before the Board. It was a novel idea that resulted in layering another level of complicated analysis on the development of a SARR operating plan, and that ultimately made the SAC test even more complex than it already had become.

"AEP Texas", Arizona Electric Power Cooperative, Inc. v. BNSF Railway, STB Docket No. 42113, slip op. (STB served Nov. 22, 2011) "AEPCO".

Moreover, because the complainants in those cases had based the development of their operating plans on the precedent established through decades of decided rate cases, they reasonably failed to anticipate that the railroads would argue that this new analysis should be required in order for a SARR operating plan to be considered complete. The complainants addressed this issue of first impression for the first time in Rebuttal, because they could not have anticipated every possible new analysis the railroad might argue should be included in Reply. This was not a failure of the complainants to present their case-in-chief in opening, it was a failure to be clairvoyant. If the complainants' Rebuttal narrative were limited in length, it could not have adequately responded to this issue.

The Board's ultimate decision to accept the railroads operating plans in those cases was based, in part, on the fact that they included stand-alone classification and blocking plans. Complainants cannot reasonably be expected to present evidence related to issues that have never been included in previously decided rate cases in their opening evidence. Rather, they must base their Opening evidence on precedent. As the complainant has the burden of proof, straying from precedent is exceedingly risky. In contrast, railroads in recent cases have used Reply as a laboratory to introduce and test new theories and analytical frameworks.²⁶ The Board's recent decisions accepting these novel analytical modules as required SAC components encourages this approach. The catch-22 for the complainants in Rebuttal is clear: they must either accept the new idea, which will undoubtedly result in increased SAC, or develop

²⁶ These new theories and frameworks have included, but are not limited to, including equity flotation costs based on Initial Public Offerings, calculating ad valorem taxes based on presumed SARR profitability, making movement specific adjustment to the URCS variable costs used in ATC divisions and the maximum markup methodology, and revising the fuel cost adjustment factor used in the discounted cash flow model.

comprehensive Rebuttal counterarguments regarding the necessity of the new SAC components and defend the Opening evidence and the precedent on which it is based.

In another example, in an ongoing rate case, the defendant railroad included a single paragraph in which it made a claim regarding the provided routing data for a select group of trains, and simply referred to its workpapers. To develop Rebuttal evidence, the complainant had to trace the railroad's workpapers backward from an Excel output file, through the SQL code, and to the supporting raw data. To fully explain the issue to the Board, the complainant developed a 21-page narrative response complete with several tables and graphics.

In this case, the railroad raised an issue in one paragraph of its Reply filing that required the complainant to develop a lengthy Rebuttal to complete the case record. However, if the complainant was restricted by a page count, it would have had to simply state that it disagreed with the railroad's claim and point to its workpapers. This would have left the Board in a position where it would have to work through the parties' complicated SQL code without narrative guidance to determine which party was correct.

In another example from an active case, the defendant railroad stated on Reply that a select group of trains identified in its databases as one type of train actually operated as a different type of train. The railroad further stated that these trains required special handling which would require an entirely new operating plan. This description of operations for this type of train had never before been posited by any party in any rate case. Nor had it been disclosed by the railroad prior to its Reply filing. The issue required substantial response by the complainant in Rebuttal. In fact, the Rebuttal narrative section was nearly three times the length (by page count) as the corresponding Reply narrative section to which it responded.

The length of Rebuttal should not be determined based on the length of Opening evidence, because the railroads commonly introduce new arguments in Reply. Nor should it be determined based on the length of Reply. Because the complainant bears the burden of proof, its Rebuttal developed in response to Reply evidence must often be lengthy in order to provide the Board with sufficient information to navigate three rounds of complex workpapers.

The logical prior actions of the Board resulted in the development of a complete record. Placing an arbitrary limit on the length of the Rebuttal narrative would serve no purpose other than to make the narrative record less complete, handicap complainants' ability to adequately address novel arguments raised in Reply, and force the Board to traverse the parties' workpapers without the guidance provided by detailed narrative.

The Board is correct that the railroads' final briefs are often more akin to surrebuttal than a summary of key issues. This is by design. The railroads turn the regulatory order on its head by using their Reply narratives to make claims regarding their data that should have been made in the discovery phase, and to test new theoretical arguments. When this happens, the complainant must respond to the new items while also defending its opening position. The railroads take it one step further in their briefs by responding to the complainants' Rebuttal counterarguments to the railroads' new Reply allegations, and even moving to strike portions of the complainants' counterarguments as impermissible Rebuttal. Moreover, as new SAC components are introduced in successive rate cases, the test becomes even more complex, time consuming, and expensive, making it even less accessible to shippers, particularly carload shippers. A moving target is difficult to hit.

THOMAS D. CROWLEY
STATEMENT OF QUALIFICATIONS

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737, and 7 Horicon Avenue, Glens Falls, New York 12801.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering and Maintenance-of-Way Association.

The firm of L. E. Peabody & Associates, Inc. specializes in analyzing matters related to the rail transportation of all commodities. As a result of my extensive economic consulting practice since 1971 and my participation in maximum-rate, rail merger, service disputes and rule-making proceedings before various government and private governing bodies, I have become thoroughly familiar with the rail carriers and the traffic they move over the major coal routes in the United States. This familiarity extends to subjects of railroad service, costs and profitability, cost of capital, railroad capacity, railroad traffic prioritization and the structure and operation of the various contracts and tariffs that historically have governed the movement of traffic by rail.

As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic

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problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with single car and multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating practices and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected and studied both railroad terminal and line-haul facilities used in handling various commodities. These operational reviews and studies were used as a basis for the determination of the traffic and operating characteristics for specific movements of numerous commodities handled by rail.

I have frequently been called upon to develop and coordinate economic and operational studies relative to the rail transportation of various commodities. My responsibilities in these undertakings included the analyses of rail routes, rail operations and an assessment of the relative efficiency and costs of railroad operations over those routes. I have also analyzed and made recommendations regarding the acquisition of railcars according to the specific needs of various shippers. The results of these analyses have been employed in order to assist shippers in the development and negotiation of rail transportation contracts which optimize operational efficiency and cost effectiveness.

I have developed property and business valuations of privately held freight and passenger railroads for use in regulatory, litigation and commercial settings. These valuation assignments

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required me to develop company and/or industry specific costs of debt, preferred equity and common equity, as well as target and actual capital structures. I am also well acquainted with and have used the commonly accepted models for determining a company's cost of common equity, including the Discounted Cash Flow Model ("DCF"), Capital Asset Pricing Model ("CAPM"), and the Farma-French Three Factor Model.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the Interstate Commerce Commission ("ICC") and the Surface Transportation Board ("STB") for the development of variable costs for common carriers, with particular emphasis on the basis and use of the Uniform Railroad Costing System ("URCS") and its predecessor, Rail Form A. I have utilized URCS/Rail form A costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.

I have frequently presented both oral and written testimony before the ICC, STB, Federal Railroad Administration, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, rail traffic and operating patterns, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations or damages, including interest. I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States. I have also presented expert testimony in a number of court and arbitration proceedings concerning the level

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of rates, rate adjustment procedures, service, capacity, costing, rail operating procedures and other economic components of specific contracts.

Since the implementation of the *Staggers Rail Act of 1980*, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges.

I have developed different economic analyses regarding rail transportation matters for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Chemistry Council, American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, the Chlorine Institute, Coal Exporters Association, Edison Electric Institute, the Fertilizer Institute, Mail Order Association of America, National Coal Association, National Grain and Feed Association, National Industrial Transportation League, North America Freight Car Association and Western Coal Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various transportation-related problems.

In the two Western rail mergers that resulted in the creation of the present BNSF Railway Company and Union Pacific Railroad Company and in the acquisition of Conrail by Norfolk Southern Railway Company and CSX Transportation, Inc., I reviewed the railroads' applications including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that

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existed before the proposed mergers and acquisition. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

I have participated in various proceedings involved with the division of through rail rates. For example, I participated in ICC Docket No. 35585, *Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al.* which was a complaint filed by the northern and mid-western rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and mid-western rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, *Notice of Intent to File Division Complaint by the Long Island Rail Road Company.*

ROBERT D. MULHOLLAND
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My name is Robert D. Mulholland. I am an economist and a Vice President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737, and 7 Horicon Avenue, Glens Falls, New York 12801.

I am a graduate of George Mason University's School of Public Policy, from which I obtained a Master's degree in Transportation Policy, Operations & Logistics, and Bowdoin College, from which I obtained a Bachelor of Arts degree in Government and Legal Studies. I have been employed by L. E. Peabody & Associates, Inc since 2008 and from 1995-2004. From 2004-2006, I was the staff economist for the Office of Freight Management and Operations of the Federal Highway Administration ("FHWA") of the United States Department of Transportation ("USDOT"). From 2006-2008, I worked for ICF International as a consultant in the transportation group.

L. E. Peabody & Associates, Inc. specializes in economic and operations analysis of the freight rail industry. I have directed and conducted economic studies and prepared reports for freight carriers, shippers, federal agencies, the U.S. Congress, various associations, and other public bodies dealing with transportation and related economic issues. I have organized and directed traffic operations and cost analyses in connection with single and multiple car movements and unit train shipments of various commodities, rail facilities analyses, rate and revenue division analyses, and other studies dealing with freight transportation markets for many commodities over various surface modes throughout the United States.

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I have developed evidence containing base year traffic, revenues, and revenue divisions, forecasts of those volumes and revenues, train lists supporting the movement of selected traffic, and operating statistics associated with their movement, for hypothetical stand-alone railroads (“SARR”) in several Surface Transportation Board (“STB” or “Board”) proceedings dealing with the calculation of maximum reasonable rail transportation rates for coal and chemical shippers.

I have presented written testimony before the STB in several Ex Parte proceedings, including: Docket No. EP 706, related to reporting requirements for PTC-related expenses and investments; Docket No. Docket No. Ex Parte 715, related to the inclusion of cross-over traffic and the development of revenue divisions for that traffic in rate reasonableness proceedings; Docket No. EP 431 (Sub-No. 4), related to proposed adjustments to the STB’s Uniform Railroad Costing System (“URCS”) mode, and Docket No. EP 661 (Sub-No. 2), related to the application of the “Safe Harbor” provision to railroad fuel surcharge programs.

I have developed evidence and presented written testimony containing fuel cost calculations for multiple commodities in an STB proceeding dealing with the determination of reasonable practices related to fuel surcharges.

As a result of my extensive experience since 1995, including participation in and support of various proceedings before the STB and other government bodies, I have become thoroughly familiar with the major rail carriers in the United States. This familiarity extends to subjects of railroad operations, accounting procedures, cost

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structure, pricing practices, revenue collection, and capacity utilization. I am also very familiar with the Class I railroads' traffic, revenue, and operations databases.

I developed a series of reports evaluating and critiquing the Federal Railroad Administration's ("FRA") benefit-cost analyses (BCA") related to the implementation of Positive Train Control ("PTC") systems on the Class I carriers' rail systems.

I have developed numerous variable cost calculations utilizing the various formulas employed by the STB for the development of variable costs for common carriers, with particular emphasis on the basis and use of the Uniform Railroad Costing System ("URCS"). I have utilized URCS costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1995.

I have conducted multiple studies of rail fuel surcharge revenue collection formulae relative to fuel consumption and costs, and I have developed studies analyzing delivered fuel prices to electric utilities using Federal Energy Regulatory Commission ("FERC"), Energy Information Administration ("EIA"), and related data.

I have supported the negotiation of transportation contracts between shippers and railroads. Specifically, I have conducted studies concerning the relative efficiency and costs of railroad operations over multiple routes, transportation rates based on market conditions and carrier competition, movement-specific service commitments, and specific market- and cost-based rate adjustment provisions.

In the Western rail merger that resulted in the creation of the present Union Pacific Railroad Company, I reviewed the railroads' applications including their supporting traffic, cost and operating data and developed detailed evidence supporting

ROBERT D. MULHOLLAND
STATEMENT OF QUALIFICATIONS

requests for conditions designed to maintain the competitive rail environment that existed before the proposed merger. Following the merger, I developed studies analyzing its impact on system traffic flows and transit times.

I have inspected and studied railroad terminal facilities used in handling various commodities to collect data that were used as a basis for the determination of traffic and operating characteristics for specific movements handled by rail.

While employed at FHWA, I was a member of the USDOT inter-agency working group that drafted the National Freight Policy. In addition, I served on the USDOT Freight Gateway Team, a group headed by the Undersecretary for Policy and composed of one representative from each of the surface modal agencies.

While employed by ICF International, I directed and conducted numerous analyses of the rail and trucking industries for federal transportation agencies including the Federal Railroad Administration ("FRA"), the Federal Motor Carrier Safety Administration ("FMCSA"), and the FHWA, including analyses of the current rail and trucking industries and forecasts of future trends in both industries.

Exhibit No. 3
DuPont Discovery Requests

BEFORE THE
SURFACE TRANSPORTATION BOARD

E.I. DUPONT DE NEMOURS AND COMPANY)	
)	
Complainant,)	
)	
v.)	Docket No. NOR 42125
)	
NORFOLK SOUTHERN RAILWAY COMPANY)	
)	
)	
Defendant.)	

COMPLAINANT'S FIRST SET OF DISCOVERY REQUESTS
TO DEFENDANT

Complainant E.I. DuPont De Nemours and Company ("DuPont"), pursuant to 49 U.S.C. §§ 10701, 10704, 10707, 11701 and 11704, and 49 C.F.R. Part 1114.30, hereby submits its First Set of Discovery Requests to Defendant, Norfolk Southern Railway Company ("NS").

Responses to "Complainant's First Set of Discovery Requests" should be delivered to the offices of Thompson Hine LLP, 1920 N Street, N.W., Washington, D.C. 20036, January 14, 2011, unless otherwise agreed by the parties. DuPont is prepared to cooperate with NS to facilitate the expeditious production of documents with the minimum practical burden.

I. DEFINITIONS

The following defined terms are used herein:

1. "AB" means the Akron Barberton Cluster Railroad Company and/or its subsidiaries and affiliates.
2. "ABS" means the Alabama Southern Railroad and/or its subsidiaries and affiliates.
3. "ACWR" means the Aberdeen, Carolina & Western Railway Company Railroad and/or its subsidiaries and affiliates.
4. "AGR" means the Alabama & Gulf Coast Railway LLC and/or its subsidiaries and affiliates.
5. "ALS" means The Alton & Southern Railway Company and/or its subsidiaries and affiliates.
6. "And," "or," and/or "each" shall be construed in the disjunctive or conjunctive as necessary in order to bring within the scope of each Interrogatory or Request all responsive information or documents which otherwise might be construed as outside the scope of the Interrogatory or Request. All use of the masculine gender shall be deemed to include the feminine.
7. "ASRY" means the Ashland Railway Inc. (Ohio) and/or its subsidiaries and affiliates.

8. "ATN" means the Alabama & Tennessee River Railway LLC and/or its subsidiaries and affiliates.

9. "Auto Rack Car(s)" means a flat car with fixed steel racks for transporting set-up automobiles and light trucks. Racks have either two or three levels, and are equipped with tie-down devices. Two-level cars are often called "bi-level" auto racks and three-level cars are called "tri-level" auto racks.

10. "Automotive Distribution Facilities" means one or more of the four auto distribution Mixing Centers, 18 Norfolk Southern Auto Distribution Facilities and 20 Private Auto Distribution Facilities throughout the eastern U.S. as referred to in "NS_auto_distr.pdf" found at www.nscorp.com/nscporta/nscorp/Customers/Automotive/Facilities.

11. "Automotive Train" means a freight train that consists primarily of Auto Rack Cars.

12. "AVR" means the Allegheny Valley Railroad and/or its subsidiaries and affiliates.

13. "AWW" means the Algiers, Winslow & Western Railway and/or its subsidiaries and affiliates.

14. "BB" means the Buckingham Branch Railroad Company and/or its subsidiaries and affiliates.

15. “BDRV” means the Belvidere & Delaware River Railway and/or its subsidiaries and affiliates.
16. “BH” means the B&H Rail Corporation and/or its subsidiaries and affiliates.
17. “BLOL” means the Bloomer Shippers Connecting Railroad Co. and/or its subsidiaries and affiliates.
18. “BNSF” means the BNSF Railway Company and/or its subsidiaries and affiliates.
19. “BPRR” means the Buffalo & Pittsburgh Railroad and/or its subsidiaries and affiliates.
20. “BRC” means The Belt Railway Company of Chicago and/or its subsidiaries and affiliates.
21. “BRW” means the Black River & Western Railroad and/or its subsidiaries and affiliates.
22. “BS” means the Birmingham Southern Railroad Company and/or its subsidiaries and affiliates.
23. “BSDA” means the Bi-State Development Agency Railroad and/or its subsidiaries and affiliates.
24. “BSOR” means the Buffalo Southern Railroad, Inc. and/or its subsidiaries and affiliates.

25. "Bulk Transfer Facilities" means rail-truck transfer facilities marketed by NS which are described at www.nscorp.com/nscportal/nscorp/Customers/Distribution%20Network/ as being subdivided into three classifications including: 1) Thoroughbred Bulk Terminals; 2) Independent Bulk Terminals; and 3) Terminals on Connecting Railroads.

26. "BVRV" means the Brandywine Valley Railroad Company and/or its subsidiaries and affiliates.

27. "CCKY" means the Chattooga & Chickamauga Railway Company and/or its subsidiaries and affiliates.

28. "CCRA" means the Camp Chase Railroad Company and/or its subsidiaries and affiliates.

29. "CCRC" means the Cleveland Commercial Railroad Company LLC and/or its subsidiaries and affiliates.

30. "CFE" means the Chicago, Ft. Wayne & Eastern, A Division of Central Railroad of Indianapolis, Inc. and/or its subsidiaries and affiliates.

31. "CGR" means the CG Railway, Inc. and/or its subsidiaries and affiliates.

32. "Challenged Rate(s)" means the single line and AAR Accounting Rule 11 rate(s) for common carrier rail transportation service that are identified in Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint in this proceeding.

33. "CIND" means the Central Railroad Company of Indiana and/or its subsidiaries and affiliates.

34. "CKIN" means the Chesapeake and Indiana Railroad Company Inc. and/or its subsidiaries and affiliates.

35. "CLP" means The Clarendon and Pittsford Railroad Company and/or its subsidiaries and affiliates.

36. "CMR" means the Central Midland Railway Company and/or its subsidiaries and affiliates.

37. "CNYK" means the Central New York Railroad Corporation and/or its subsidiaries and affiliates.

38. "Coal train" means any train that transports primarily loaded or empty coal cars, including a mine gathering or distribution run, a train carrying coal cars for more than one customer, and a train carrying coal cars from more than one origin to single or more than one destination on one bill of lading or other shipping document.

39. "COFC" means container on flat car.

40. "CSS" means the Chicago South Shore and South Bend Railroad and/or its subsidiaries and affiliates.

41. "CSXT" means CSX Transportation, Inc., and/or its subsidiaries and affiliates.

42. "CT" means City of Columbia d/b/a Columbia Terminal and/or its subsidiaries and affiliates.

43. "CUOH" means The Columbus & Ohio River R.R. Co. and/or its

subsidiaries and affiliates.

44. "CWRO" means the Cleveland Works Railway Company-Mittal Steel USA and/or its subsidiaries and affiliates.

45. "DCRR" means the Dubois County Railroad and/or its subsidiaries and affiliates.

46. "Destination(s)" means any of the rail stations or facilities where transportation of DuPont rail shipments under the Challenged Rates terminates. For example, if the Challenged Rate only covers transportation to a point of interchange with another carrier for continued movement towards the final destination, the interchange would be the Destination. If the Challenged Rate, however, includes all or any portion of the transportation over a connecting carrier, the Destination would be the point at which the Challenged Rate no longer applies.

47. "DGVR" means the Durbin & Greenbrier Valley Railroad Inc. and/or its subsidiaries and affiliates.

48. "Distributed power" means a train configuration in which one or more locomotives are positioned at the front of the train and one or more locomotives are positioned at an intermediate point in the train and/or at the rear of the train, with the intermediate or rear locomotives remotely controlled from the lead locomotive on the train.

49. "DL" means the Delaware-Lackawanna R.R. Co. Inc. and/or its subsidiaries

and affiliates.

50. "DLWR" means the Depew Lancaster & Western Railroad Co., Inc. and/or its subsidiaries and affiliates.

51. "Document(s)" means all writings or visual displays of any kind, whether generated by hand or mechanical means, including, without limitation, photographs, lists, memoranda, reports, notes, letters, electronic mail, phone logs, contracts, drafts, workpapers, computer print-outs, computer tapes, telecopies, telegrams, newsletters, notations, books, affidavits, statements (whether or not verified), speeches, summaries, opinions, studies, analyses, evaluations, statistical records, proposals, treatments, outlines, any electronic or mechanical records or representations (including physical things such as, but not limited to, computer disks), and all other materials of any tangible medium or expression, in NS' current or prior possession, custody or control. A draft or non-identical copy is a separate document within the meaning of this term.

52. "DT" means the Decatur Junction Railway Co. and/or its subsidiaries and affiliates.

53. "DuPont car(s)" or "DuPont service" means the cars containing commodities moving under Challenged Rates to and from Origins and Destinations over the DuPont route(s).

54. "DuPont route(s)" means the railroad line segments over which NS moves loaded and empty railcars between Origins and Destinations.

55. "DuPont shipment(s)" means the movements identified in Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint.

56. "DuPont train(s)" means the trains containing loaded or empty railcars moving to and from Origins and Destinations over the DuPont route(s).

57. "ECTB" means the East Chattanooga Belt Railway Company and/or its subsidiaries and affiliates.

58. "ESPN" means the East Penn Railroad, LLC and/or its subsidiaries and affiliates.

59. "ETRY" means the East Tennessee Railway LP and/or its subsidiaries and affiliates.

60. "EV" means The Everett Railroad Company and/or its subsidiaries and affiliates.

61. "FC" means the Fulton County Railroad, Inc. and/or its subsidiaries and affiliates.

62. "FIR" means the Flats Industrial Railroad Co. and/or its subsidiaries and affiliates.

63. "GC" means the Georgia Central Railway LP and/or its subsidiaries and affiliates.

64. "Geocoded" means process or object data associated to an entity which is linked to a specific location or an array of locations on the Earth's surface through a

standard geographic coordinate system.

65. “Geographic Coordinates” means latitude and longitude coordinates (in decimal values, with no decimal value truncation) associated to a named and standard geographic coordinate system, such as “North American Datum of 1927.”

66. “GET” means the Gettysburg & Northern Railroad Co. and/or its subsidiaries and affiliates.

67. “GMR” means the Georgia Midland Railroad, Inc. and/or its subsidiaries and affiliates.

68. “GNRR” means the Georgia Northeastern Railroad Company, Inc. and/or its subsidiaries and affiliates.

69. “GRW” means Gary Railway Company and/or its subsidiaries and affiliates.

70. “GS” means the Georgia Southern Railway Co. and/or its subsidiaries and affiliates.

71. “GSWR” means the Georgia Southwestern Railroad Company, Inc. and/or its subsidiaries and affiliates.

72. “HMCR” means The Hunstville and Madison County Railroad Authority and/or its subsidiaries and affiliates.

73. “HOG” means the Heart of Georgia Railroad, Inc. and/or its subsidiaries and affiliates.

74. "HPTD" means the High Point, Thomasville & Denton Railroad Company and/or its subsidiaries and affiliates.

75. "HR" means the Heritage Railroad Corp. and/or its subsidiaries and affiliates.

76. "HRS" means the Hollidaysburg and Roaring Spring Railroad and/or its subsidiaries and affiliates.

77. "HRT" means the Hartwell Railroad Company and/or its subsidiaries and affiliates.

78. "Identify," when referring to a document, means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and/or recipient(s).

79. "Identify," when referring to information, means to list or produce documents containing the specified information.

80. "IHB" means the Indiana Harbor Belt Railroad Company and/or its subsidiaries and affiliates.

81. "IMRR" means the Illinois & Midland Railroad, Inc. and/or its subsidiaries and affiliates.

82. "INRD" means The Indiana Rail Road Company and/or its subsidiaries and affiliates.

83. "Intermodal Train" means a freight train that consists of any combination of roadrailer equipment, double-stack or pedestal flat cars, and flat cars equipped for TOFC, COFC, multi-level auto-rack or auto frames.

84. "IORY" means the Indiana & Ohio Rail System and/or its subsidiaries and affiliates.

85. "IR" means the Illinois Railway and/or its subsidiaries and affiliates.

86. "ISRR" means the Indiana Southern Railroad, Inc. and/or its subsidiaries and affiliates.

87. "JEFW" means the Jefferson Warrior Railroad Company and/or its subsidiaries and affiliates.

88. "JVRR" means the Juniata Valley Railroad Company and/or its subsidiaries and affiliates.

89. "KBSR" means the Kankakee, Beaverville, and Southern Railroad Company and/or its subsidiaries and affiliates.

90. "KCS" means the Kansas City Southern Railway Co. and/or its subsidiaries and affiliates.

91. "KT" means the Kentucky and Tennessee Railway Company and/or its subsidiaries and affiliates.

92. "KXHR" means the Knoxville & Holston River Railroad Company, Inc. and/or its subsidiaries and affiliates.

93. "LC" means the Lancaster and Chester Railway Company and/or its subsidiaries and affiliates.

94. "LER" means The Logansport & Eel River Short-Line Company, Inc. and/or its subsidiaries and affiliates.

95. "LIRC" means the Louisville & Indiana Railroad Company and/or its subsidiaries and affiliates.

96. "LNAL" means the Louisville, New Albany & Corydon Railroad and/or its subsidiaries and affiliates.

97. "Local Train" means "Way train" as used in NS' R-1 Annual Report to the STB.

98. "LRWY" means the Lehigh Railway, LLC and/or its subsidiaries and affiliates.

99. "LS" means the Luzerne & Susquehanna Railway Co. and/or its subsidiaries and affiliates.

100. "LT" means The Lake Terminal Railroad Company and/or its subsidiaries and affiliates.

101. "LVRB" means the Lehigh Valley Rail Mgmt. LLC - Bethlehem Division and/or its subsidiaries and affiliates.

102. "LVRJ" means the Lehigh Valley Rail Mgmt. LLC-Johnstown Division and/or its subsidiaries and affiliates.

103. "LW" means the Louisville and Wadley Railway Company and/or its subsidiaries and affiliates.

104. "MAW" means the Maumee & Western Railroad Corp. and/or its subsidiaries and affiliates.

105. "MDS" means the Meridian Southern Railway, LLC and/or its subsidiaries and affiliates.

106. "MIDH" means the Middletown & Hummelstown Railroad Company and/or its subsidiaries and affiliates.

107. "MNBR" means the M&B Railroad LLC and/or its subsidiaries and affiliates.

108. "MOC" means the Missouri Central Railroad and/or its subsidiaries and affiliates.

109. "MRS" means the Manufacturers Railway Company and/or its subsidiaries and affiliates.

110. "MSCI" means the Mississippi Central Railroad Company and/or its subsidiaries and affiliates.

111. "MSF" means the Mississippi Export Railroad Company and/or its subsidiaries and affiliates.

112. "MTNR" means the Mississippi Tennessee Railroad Company and/or its subsidiaries and affiliates.

113. "NBER" means the Nittany & Bald Eagle Railroad Company and/or its subsidiaries and affiliates.

114. "NCIR" means the New Castle Industrial Railroad and/or its subsidiaries and affiliates.

115. "NCRL" means the NC Railroad, Inc. and/or its subsidiaries and affiliates.

116. "NHRR" means the New Hope & Ivyland Rail Road and/or its subsidiaries and affiliates.

117. "NOGC" means the New Orleans & Gulf Coast Railway Co., Inc. and/or its subsidiaries and affiliates.

118. "NOPB" means the New Orleans Public Belt Railroad and/or its subsidiaries and affiliates.

119. "NOW" means the Northern Ohio & Western Railway, LLC and/or its subsidiaries and affiliates.

120. "NS" means Norfolk Southern Railway Company, its present or former employees, agents, counsel, officers, directors, advisors, consultants, divisions, departments, predecessors, parent and/or holding companies, all subsidiaries and affiliates identified on page 4 of NS' 2009 Annual Report Form R-1 that provide transportation and/or terminal services in the SARR States, or any of them, and all other persons acting (or who have acted) on its behalf.

121. "NS Corp" means the Norfolk Southern Corporation, parent company to

NS.

122. "NSHR" means the North Shore Railroad Company and/or its subsidiaries and affiliates.

123. "NSR" means the Newburgh & South Shore Railroad, LLC and/or its subsidiaries and affiliates.

124. "NYLE" means the New York & Lake Erie Railroad and/or its subsidiaries and affiliates.

125. "NYSW" means The New York, Susquehanna & Western Ry. Corp. and/or its subsidiaries and affiliates.

126. "OHPA" means the Ohio & Pennsylvania R.R. Co. and/or its subsidiaries and affiliates.

127. "OHRV" means the Owego & Harford Railway, Inc. and/or its subsidiaries and affiliates.

128. "Origin(s)" means any of the rail stations or facilities where DuPont originates rail shipments of the commodities moving under the Challenged Rates or where NS receives DuPont shipments in interchange from another carrier.

129. "PAL" means the Paducah & Louisville Railway, Inc. and/or its subsidiaries and affiliates.

130. "PAM" means the Pittsburgh, Allegheny & McKees Rocks Railroad Company and/or its subsidiaries and affiliates.

131. "PAS" means the Pan Am Southern, LLC and/or its subsidiaries and affiliates.

132. "PBL" means The Philadelphia Belt Line Railroad Company and/or its subsidiaries and affiliates.

133. "Person(s)" means natural persons, corporations, institutions, partnerships, firms, joint ventures, associations, political subdivisions or other legal entities, as the case may be.

134. "PICK" means The Pickens Railway Company and/or its subsidiaries and affiliates.

135. "PKHP" means The Pickens Railway Company - Honea Path Division and/or its subsidiaries and affiliates.

136. "POHC" means the Pittsburgh & Ohio Central Railroad Company and/or its subsidiaries and affiliates.

137. "Possession, custody, or control" refers to and includes documents actually within the possession, custody or control of NS or any other person acting for or in concert with NS; and refers to and includes documents prepared by, obtained, or placed in the possession, custody, or control of any such person within the scope of his or her duties or relationship to NS; and further refers to and includes documents having been placed in the temporary possession, custody, or control of any third party by any of the foregoing or NS. Documents are deemed to be in the possession, custody, or control of NS if NS has

the right to secure the document, or a copy thereof, from another person or entity, whether public or private, having such actual physical possession, custody, or control thereof.

138. "Price" or "prices" mean the price per railcar or other unit of measure, and whether it is f.o.b. or f.a.s. a railroad car, vessel, destination, port or other conveyance.

139. "PRL" means the Penn Eastern Rail Lines, Inc. and/or its subsidiaries and affiliates.

140. "PRV" means the Pearl River Valley Railroad Company and/or its subsidiaries and affiliates.

141. "Rail yard" or "yard" means a railroad facility where a yard crew and/or locomotive has been assigned.

142. "RBMN" means the Reading Blue Mountain and Northern Railroad Company and/or its subsidiaries and affiliates.

143. "Related," "related to," and "relating to" mean and include making a statement discussing, describing, referring to, reflecting, explaining, analyzing, or in any way pertaining to, in whole or in part, the subject matter of the Interrogatory or Request.

144. "RJCC" means the R. J. Corman Railroad Co./Central Kentucky Lines and/or its subsidiaries and affiliates.

145. "RJCP" means the RJ Corman Railroad Company/Pennsylvania Lines, Inc. and/or its subsidiaries and affiliates.

146. "Road Train" means "Through train" as used in NS' R-1 Annual Report to the STB.
147. "RRC" means the Redmont Railway Company and/or its subsidiaries and affiliates.
148. "RSM" means the Railroad Switching Service of Missouri Inc. and/or its subsidiaries and affiliates.
149. "RSR" means the Rochester & Southern Railroad and/or its subsidiaries and affiliates.
150. "SAN" means the Sandersville Railroad Company and/or its subsidiaries and affiliates.
151. "SARR States" means the States of Alabama, Delaware, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia.
152. "SB" means the South Buffalo Railway Company and/or its subsidiaries and affiliates.
153. "SCIH" means the South Chicago and Indiana Harbor Railway Company and/or its subsidiaries and affiliates.
154. "SH" means the Steelton & Highspire Railroad Company and/or its subsidiaries and affiliates.

155. "SLRS" means the SMS Rail Service Inc. and/or its subsidiaries and affiliates.

156. "SPLC" means Standard Point Location Code.

157. "SQVR" means the Sequatchie Valley Railroad Co. and/or its subsidiaries and affiliates.

158. "SRNJ" means the Southern Railroad Company of New Jersey and/or its subsidiaries and affiliates.

159. "ST" means the Springfield Terminal Railway Company and/or its subsidiaries and affiliates.

160. "STB" means the Surface Transportation Board.

161. "SVRR" means the Shamokin Valley Railroad Company and/or its subsidiaries and affiliates.

162. "SWP" means the Southwest Pennsylvania Railroad and/or its subsidiaries and affiliates.

163. "TASD" means the Terminal Railway Alabama State Docks and/or its subsidiaries and affiliates.

164. "TCKR" means the Turtle Creek Industrial Railroad, Inc. and/or its subsidiaries and affiliates.

165. "TCS" means Triple Crown Services and/or its subsidiaries and affiliates.

166. "TDIS" means Thoroughbred Direct Intermodal Services and/or its subsidiaries and affiliates.
167. "TISH" means the Tishomingo Railroad Company, Inc. and/or its subsidiaries and affiliates.
168. "TOFC" means Trailer on Flat Car.
169. "TPW" means the Toledo, Peoria and Western Railway Corporation and/or its subsidiaries and affiliates.
170. "Transworks" means Transworks, Inc., Transworks Company and Transworks of Indiana, Inc. and/or the subsidiaries and affiliates of these companies.
171. "TRRA" means the Terminal Railroad Association of St. Louis and/or their subsidiaries and affiliates.
172. "TYBR" means the Tyburn Railroad Company and/or its subsidiaries and affiliates.
173. "URR" means the Union Railroad Company and/or its subsidiaries and affiliates.
174. "USR" means the U.S Rail Corporation LLC and/or its subsidiaries and affiliates.
175. "VSRR" means the Virginia Southern Division and/or its subsidiaries and affiliates.

176. "VVRR" means the Vermillion Valley Railroad Company, Inc. and/or its subsidiaries and affiliates.

177. "WCOR" means the Wellsboro & Corning Railroad and/or its subsidiaries and affiliates.

178. "WE" means the Wheeling & Lake Erie Railway Company and/or its subsidiaries and affiliates.

179. "WNYP" means the Western New York & Pennsylvania Railroad, LLC and/or its subsidiaries and affiliates.

180. "WSRY" means the Winamac Southern Railway Company and/or its subsidiaries and affiliates.

181. "WSS" means the Winston-Salem Southbound Railway Company and/or its subsidiaries and affiliates.

182. "WTNN" means the West Tennessee Railroad, LLC and/or its subsidiaries and affiliates.

183. "WTRY" means The Warren & Trumbull Railroad Company and/or its subsidiaries and affiliates.

184. "WW" means the Winchester & Western Railroad Company and/or its subsidiaries and affiliates.

185. "YRC" means the York Railway Company and/or its subsidiaries and affiliates.

186. "YSRR" means the Youngstown & Southwestern Railroad Company Inc. and/or its subsidiaries and affiliates.

II. INSTRUCTIONS

NS is requested to conform to the following instructions in responding to these Requests and Interrogatories.

1. These Interrogatories and Document Requests call for all information, including information contained in documents that are in the possession, custody, or control of NS.

2. Each paragraph shall operate and be construed independently. Unless otherwise indicated, no paragraph limits the scope of any other paragraph.

3. Where these discovery requests seek data in a computer-readable format, machine-readable format, or in its native format, this data is defined as an electronic file which contains structured, relational data, and is managed within a commercially available and relational database system (for example Microsoft, Oracle, IBM) and is readable via commercially available and standard Microsoft Windows software API (Application Programming Interfaces) methods to include Open Database Connectivity (ODBC) implementations thereby making the data accessible independent of the host system.

If the source table is stored within a non-relational system, such as a 'flat file', or a

custom system (not commercially available) provide the data in standard sequential or delimited text files. The text files will be MS-DOS or MS-Windows compatible text formats.

- a. For each computer file supplied provide:
 - i. The name and description of the source database or other file from which the records in the computer file were selected (stating whether the file is an original extract from a line of business transactional or data warehouse computer system, or if the provided file is an extract, or report, created specifically for this request) including a graphic or textural representation of the database relational model for each system to include all named tables of data within the system's relational model, and for every table provide a list of fields, primary keys, foreign keys, list relational links to other tables and fields, and filters, if any, associated to the relational links. Include all related tables, and all fields within each included table. List the fields which define a unique record (row) for each table, or state if the table does not require unique row differentiators or primary keys. For code tables, provide the code, and associated data elements in a discreet list (no duplicates);
 - ii. A description of how the records in the file produced were selected;
 - iii. The original table names (no aliases), original field names, to match the provided systems' data structures within each computer program (in native software and text file) and intermediate file used in deriving the files produced if the files produced are flat files. If the files produced are commercially available relational database files, provide the method used and code (if code was created) used to export the data to this relational format, including the operating system and version under which the final text files or relational tables were produced; and
 - iv. A relational diagram defining relationships between tables,

with all fields, listing primary keys, foreign keys, with each table or file provided as listed in the relational diagram. Also provide all table indexes, and index files, which define the index to be clustered or non-clustered.

- b. For each field in each computer database file provide a complete, standard data structure, including:
 - i. The name of the field including its source table name, and if different from the LOB (line of business) or off-line analytical system field name, provide all field name incarnations so that there is a linkage between the provided fieldname and the original source fieldname and source table, and source application/system. Also provide the "Synonymous Name", that being a single word or multiple words that differ from the fieldname, but represents the same data element using alternative or more descriptive terminology. Also provide the "Context", that being a designation or description of the application environment in which the data item (or field) is applied or from which it is originally derived (its origin);
 - ii. The starting and ending positions of the field if the file is a non-delimited flat file, or if the file is delimited, verify that the delimiter is inserted at the end of each field and the delimiter is not contained, as data, within any data cell (provide row terminators and line feed codes), otherwise, if the provided data set is a relational database "table", export the table structure into a separate ANSI SQL 92 code or text file;
 - iii. A detailed definition of the field and whether this field is the record's (or row's) unique identifier, or it is one of many fields which create a unique row (list them);
 - iv. A detailed description of the data in the field, including an explanation of what they are used for and also provide all related index files in SQL code format or text files, if any;
 - v. The type of data in the field, i.e., whether numeric, character, alphanumeric, number of digits, number of significant digits,

whether signed or unsigned (i.e., negatives allowed) and whether this field is Unicode, or contains any constraints, or requirements to be Non-Null, or non-blank;

- vi. If the values in a field are terms or abbreviations, a list of all terms or abbreviations used with detailed definitions of each and provide the approved domain (range of values if indeterminate) or list of values permitted if determinate. Also provide minimum and maximum values, including whether the values are Null, hidden, or specific ASCII or ISO codes. Include the character encoding or software vendor's code page, for each table if any;
- vii. An indication of whether the data in the field are packed or compressed; and
- viii. If the data in the field are packed or compressed, the type of packing or compression:
 - (1) Zoned with low-order sign;
 - (2) Binary with LSB first;
 - (3) Binary with MSB first;
 - (4) Packed with high-order sign;
 - (5) Packed with low-order sign;
 - (6) Packed with no sign; and
 - (7) Other (specify and provide detailed instructions for unpacking).
- ix. If the data files and tables originate on a non-Microsoft Windows operating system, state the original operating system and convert to Microsoft Windows format.
- x. For data or other electronic information submissions where the source system does not have a 32-bit operating system, verify that all data and files are computer-readable on a 32-bit operating system.

4. If an answer or the production of any responsive document is withheld under 49 C.F.R. § 1114.30(a)(1) on the basis of a claimed privilege or attorney work

product, then for each such answer or document, provide the following information: its date, type (e.g., letter, meeting, notes, memo, etc.), author (note if author is an attorney), addressee(s)/recipient(s) (note if addressee(s) or recipient(s) is an attorney), general subject matter, and basis for withholding the information.

5. If the answer to any Interrogatory or the production of any responsive document is withheld on claimed grounds other than privilege or attorney work product, state with specificity the basis for such withholding.

6. NS is requested to supplement its production in the manner provided in 49 C.F.R. Part 1114.29.

7. If a responsive document was, but is no longer in NS' possession, custody, or control, describe what disposition was made of it.

8. Where knowledge or information in the possession, custody, or control of NS is requested, such request includes knowledge or information in the possession, custody, or control of its employees, agents, representatives, and consultants.

9. Words in the singular include plural and vice versa

10. Dates are inclusive unless otherwise stated.

11. References to the present tense shall be construed to include the past tense, and references to the past tense shall include the present tense, as necessary to bring within the scope of each Interrogatory or Request For Production all knowledge or

information that might otherwise be construed to be outside the scope of the Interrogatory or Request For Production.

12. All documents should be produced or made available for inspection in the form in which they are retained by NS in its usual course of business (e.g., if the documents are in a file, the file containing the documents should be produced), unless otherwise agreed by DuPont and NS. All files containing responsive documents should be identified by the file name and number.

13. All documents produced should be organized and numbered in such a manner that DuPont may readily determine which documents are being produced in response to each specific Request for Production. If no document is produced in response to any specific Request, please so indicate in the response.

14. If NS believes that any Interrogatory, Request For Production, definition, or instruction is ambiguous, NS should set forth the language that it believes is ambiguous and the interpretation that it is using in responding to the Interrogatory or Request For Production.

15. If NS cannot answer any part of any Interrogatory or Request For Production in full, after exercising due diligence to secure the information to do so, NS should so state and answer to the extent possible, specifying its inability to answer the remainder and stating whatever information or knowledge it has regarding each unanswered part.

16. DuPont reserves the right to file supplemental and/or follow-up Interrogatories, Requests for Production, and other discovery, as necessary or appropriate.

III. REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1

Separately for each of the Challenged Rates identified in Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint, admit that each such Challenged Rate exceeds 180 percent of the variable costs of providing the transportation to which the Challenged Rates apply.

REQUEST FOR ADMISSION NO. 2

Separately for each of the movements identified in Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint, admit that NS faces no effective rail competition for the transportation of commodities under the Challenged Rates from Origins to Destinations.

REQUEST FOR ADMISSION NO. 3

Separately for each of the movements identified in Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint, admit that NS faces no effective competition from other surface modes (e.g. truck, barge, pipeline) for the transportation of commodities under the Challenged Rates from Origins to Destinations.

IV. INTERROGATORIES

INTERROGATORY NO. 1

If your response to Request for Admission No. 1 was anything other than an unqualified admission for each Challenged Rate in Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint, please explain in detail the legal basis for your response, provide the revenue-to-variable cost percentage that NS claims each such Challenged Rate produces, and identify all documents that support your response.

INTERROGATORY NO. 2

If your response to Request for Admission No. 2 was anything other than an unqualified admission for each movement in Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint, for any such movement for which your response was not an unqualified admission, please identify the specific movement; identify the rail carrier(s) that provide effective rail competition; and describe the effective rail competition that NS claims exists for the transportation to which the Challenged Rate applies, the annual volume subject to such competition, and how and why such competition is effective.

INTERROGATORY NO. 3

If your response to Request for Admission No. 3 was anything other than an unqualified admission for each movement in Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint, for any such movement for which your response was not an unqualified admission, please identify the specific movement; identify any carriers that

NS contends provide effective competition; and describe the effective competition from other surface modes that NS claims exists for the transportation to which the Challenged Rate applies, the annual volume subject to such competition, and how and why such competition is effective.

INTERROGATORY NO. 4

Please identify, by name, title and address, the person(s) who prepared each answer to these Interrogatories and each response to the foregoing Requests for Admissions, and who reviewed and selected the documents to be produced in response to each of the following Requests for Production.

INTERROGATORY NO. 5

Please provide a complete description of each DuPont movement identified on Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint by NS from Origin to Destination and from Destination to Origin, including, but not limited to, (a) a description of all transportation-related activities at Origin, at Destination, and at all intermediate stations or other points between Origin and Destination; (b) the route(s) used; (c) the railroads involved in each route; and (d) the miles for each route separated by railroad.

INTERROGATORY NO. 6

Please describe the arrangements between NS and each railroad identified in part "f" of Interrogatory No. 6 regarding all movements handled in whole or in part by NS, including:

- a. Whether NS sets all rates, fees and surcharges, including the portion of the movement handled by each railroad identified in part “f” of this Interrogatory No. 6, and if not, identify who sets the rates, fees, and surcharges;
- b. Whether the NS revenues reported in the traffic and revenue data provided in response to Request for Production No. 20 include or exclude the monies paid to each railroad identified in part “f” of this Interrogatory No. 6 as compensation for its portion of each movement;
- c. Whether a physical interchange of traffic takes place between NS and each railroad identified in part “f” of this Interrogatory No. 6, and if so, identify the interchange location(s);
- d. Whether each railroad identified in part “f” of this Interrogatory No. 6 provides its own locomotive power for its portion of each movement or if NS power is used; and
- e. Whether each railroad identified in part “f” of this Interrogatory No. 6 provides its own train crew personnel for its portion of each movement or if NS train crew personnel are used.
- f. AB, ABS, ACWR, AGR, ALS, ASRY, ATN, AVR, AWW, BB, BDRV, BH, BLOL, BPRR, BRC, BRW, BS, BSDA, BSOR, BVRY, CCKY, CCRA, CCRL, CFE, CGR, CIND, CKIN, CLP, CMR, CNYK, CSS, CT, CUOH, CWRO, DCRR, DGVR, DL, DLWR, DT, ECTB, ESPN, ETRY, EV, FC, FIR, GC, GET, GMR, GNRR, GRW, GS, GSWR, HMCR, HOG, HPTD, HR, HRS, HRT, IHB, IMRR, INRD, IORY, IR, ISRR, JEFW, JVRR, KBSR, KT, KXHR, LC, LER, LIRC, LNAL, LRWY, LS, LT, LVRB, LVRJ, LW, MAW, MDS, MIDH, MNBR, MOC, MRS, MSCI, MSE, MTNR, NBER, NCIR, NCRL, NHRR, NOGC, NOPB, NOW, NSHR, NSR, NYLE, NYSW, OHPA, OHRY, PAL, PAM, PAS, PBL, PICK, PKHP, POHC, PRL, PRV, RBMN, RJCC, RJCP, RRC, RSM, RSR, SAN, SB, SCIH, SH, SLRS, SQVR, SRNJ, ST, SVRR, SWP, TASD, TCKR, TISH, TPW, TRRA, TYBR, URR, USRP, VSRR, VVRR, WCOR, WE, WNYP, WSRY, WSS, WTNN, WTRY, WW, YRC and YSRR.

INTERROGATORY NO. 7

Interrogatory No. 7 refers to the NS rail yards located in the SARR States.

- a. For each of the yards, identify the type of yard, i.e., electronically controlled hump yard or flat switch yard. Also identify the number of shifts operated at each hump yard, and the average number of cars handled over each hump yard per day;

b. For each of the yards, describe the yard layout, yard signaling, yard switching, and the yard connection to mainline track;

c. For each of the yards which are hump yards, identify the average number of hazardous material cars handled at each yard on a daily basis that by-pass the hump;

d. For each of the NS rail yards, identify the scheduled switch crew assignments on a daily basis (including the name or designation of each assignment) and the respective duties of each assignment, e.g., switching job, bowl job, hump job, industrial job, etc.;

e. For each of the switch assignments identified in response to part d. above, please identify the typical number of switch crew members and the number and type of locomotives assigned to each switch service; and

f. For each of the switch assignments identified in response to part d. above, please state the typical number of hours worked by switch crews in performing their assigned tasks.

g. For each individual industrial switch job identified in response to part d, above, please identify the following information:

- i. The name or designation of each individual industrial switch job;
- ii. The typical number of crew members assigned to each identified industrial switch job;
- iii. Typical number and type of locomotives assigned to each identified industrial switch job;
- iv. The industries served by each identified industrial switch job; and
- v. The frequency of service of each identified industrial switch job.

h. Please identify each of the Local Trains that originate or terminate in each of the yards and for each Local Train please identify the following information:

- i. NS' train identification or designation of each Local Train;
- ii. Typical number of crew members assigned to each identified Local Train;

- iii. Typical number of loaded and empty cars assigned to each Local Train;
- iv. Typical trailing length of each identified Local Train;
- v. Typical trailing weight of each identified Local Train;
- vi. Typical number and type of locomotives assigned to each Local Train;
- vii. The route of service for each identified Local Train, and whether the Local Train is a turn crew or straight-away crew;
- viii. The industries served by each identified Local Train; and
- ix. The frequency of service of each Local Train.

i. Please describe the security procedures employed at each of the NS rail yards.

INTERROGATORY NO. 8

Please describe how hazardous materials are handled by NS in each of the yards identified in response to Interrogatory No. 7, and specifically describe the procedures used by NS to classify railcars containing hazardous materials and if such classification occurs in a separately designated portion of the yards.

INTERROGATORY NO. 9

Please provide the maximum permissible gross weight on rail ("GWR") per railcar for each NS line segment in the SARR States. For all segments having a GWR less than 286,000 lbs. per railcar, please indicate the items and factors that limit the GWR for the identified segments.

INTERROGATORY NO. 10

Please identify any computer programs or models that are currently being or have been used by NS in the past three years to simulate a locomotive's and/or a train's

performance while moving over a particular route. For all programs and models, identify all the necessary inputs required to run the program.

INTERROGATORY NO. 11

Please identify any computer programs or models that are currently being used or have been used by NS in the past three years to (a) download locomotive event or similar data from locomotives along any line segment in the SARR States, and/or (b) process locomotive event data for purposes of determining locomotive throttle position and/or fuel consumption.

INTERROGATORY NO. 12

Please identify each scheduled Road Train operating in the SARR states and for each of the identified Road Trains, please identify the following:

- a. NS' train identifier or designation of each identified Road Train and the beginning and end points served by each of the identified Road Trains;
- b. State whether the crews are assigned or in pool service. Identify home and away-from-home terminals for each crew district;
- c. The scheduled on-duty and off-duty locations for each crew assigned to the identified Road Trains;
- d. The number of crew members typically assigned per shift to each of the identified Road Trains;
- e. The number and type of locomotives typically assigned to each of the Road Trains;
- f. The number and type of loaded and empty cars typically assigned to each of the Road Trains;

- g. The trailing length for each of the identified Road Trains;
- h. The trailing weight for each of the identified Road Trains;
- i. The scheduled frequency of service for each identified Road Train; and
- j. The scheduled time of departure and arrival at stations served by each of the identified Road Trains.

INTERROGATORY NO. 13

Please identify the location and name of each intermodal terminal or yard located on NS' rail lines in the SARR States, and provide the following information for each identified terminal or yard:

- a. Please describe the services NS provides at each intermodal terminal or yard identified in response to this interrogatory;
- b. For each terminal or yard, describe the yard and track layout, yard and track signaling, yard switching, and the track connection(s) to mainline track;
- c. If NS does not provide services at any of the intermodal terminals or yards, please identify the entity that provides services at each intermodal terminal or yard;
- d. State whether the loading and unloading facilities are owned and/or operated by NS and its personnel or by an outside contractor at each facility. If owned or operated by a contractor, please identify lift and other charges contained in contracts for services provided by the contractor(s);
- e. Please describe all NS operations at each intermodal terminal or yard, including but not limited to:
 - i. A description of each job assignment at each identified intermodal terminal or yard;
 - ii. The number of shifts assigned per day for each job assignment;
 - iii. The number of train crews assigned at each intermodal terminal or yard including a description of the services provided by each train crew, and;

iv. The number of annual lifts performed at each intermodal terminal or yard.

f. Please describe the security procedures employed at each intermodal terminal or yard located on NS rail lines in the SARR States.

INTERROGATORY NO. 14

Please identify each scheduled Intermodal Train operating in the SARR states and for each of the identified Intermodal Trains, please identify the following:

- a. NS' train identifier or designation of each identified Intermodal Train and the beginning and end points served by each of the identified Intermodal Trains;
- b. The scheduled on-duty and off-duty locations for each crew assigned to the identified Intermodal Trains;
- c. The number of crew members typically assigned per shift to each of the identified Intermodal Trains;
- d. The number and type of locomotives typically assigned to each of the Intermodal Trains;
- e. The number and type of loaded and empty cars typically assigned to each of the Intermodal Trains;
- f. The trailing length for each of the identified Intermodal Trains;
- g. The trailing weight for each of the identified Intermodal Trains;
- h. The scheduled frequency of service for each identified Intermodal Train; and
- i. The scheduled time of departure from the initial terminal to scheduled time of arrival at final terminal destination on NS for each of the identified Intermodal Trains.

INTERROGATORY NO. 15

Please identify the location and name of each Automotive Distribution Facility located on NS' rail lines in the SARR States, and provide the following information for each identified Automotive Distribution Facility:

- a. Please describe the services NS provides at each Automotive Distribution Facility identified in response to this interrogatory;
- b. If NS does not provide services at any of the Automotive Distribution Facilities, please identify the entity that provides services at each Automotive Distribution Facility;
- c. Please describe NS operations at each Automotive Distribution Facility, including but not limited to:
 - i. A description of each job assignment at each Automotive Distribution Facility;
 - ii. The number of shifts assigned per day for each job assignment, and;
 - iii. The number of train crews assigned at each Automotive Distribution Facility including a description of the services provided by each train crew.
- d. Please describe the security procedures employed by NS at each of the Automotive Distribution Facilities.

INTERROGATORY NO. 16

Please identify each scheduled Automotive Train operating in the SARR states and for each of the identified Automotive Trains, please identify the following:

- a. NS' train identifier or designation of each identified Automotive Train and the beginning and end points served by each of the identified Automotive Trains;
- b. The scheduled on-duty and off-duty locations for each crew assigned to the identified Automotive Trains;

- c. The number of crew members typically assigned per shift to each of the identified Automotive Trains;
- d. The number and type of locomotives typically assigned to each of the Automotive Trains;
- e. The number and type of loaded and empty cars typically assigned to each of the Automotive Trains;
- f. The trailing length for each of the identified Automotive Trains;
- g. The trailing weight for each of the identified Automotive Trains;
- h. The scheduled frequency of service for each identified Automotive Train; and
- i. The scheduled time of departure and arrival at stations served by each of the identified Automotive Trains.

INTERROGATORY NO. 17

Please identify the locations and names of each Bulk Transfer Facility located on NS' rail lines in the SARR States, and provide the following information for each identified Bulk Transfer Facility:

- a. Please describe the services NS provides at each Bulk Transfer Facility;
- b. If NS does not provide services at any Bulk Transfer Facility, please identify the entity that provides services at each Bulk Transfer Facility;
- c. Please describe NS operations at each of the Bulk Transfer Facility, including but not limited to:
 - i. A description of each job assignment at each Bulk Transfer Facility;
 - ii. The number of shifts assigned per day for each job assignment, and;
 - iii. The number of train crews assigned at each Bulk Transfer Facility including a description of the services provided by each train crew.

d. For each Bulk Transfer Facility, please state if it is located in a NS yard, and if so, please state if the Bulk Transfer Facility is located in a distinct section of the yard and if it is serviced by NS yard locomotives;

e. Please identify each Road Train by train identifier or train designation which serves each Bulk Transfer Facility and the frequency of the service provided by each Road Train; and

f. Please identify the security procedures employed by NS at each Bulk Transfer Facility.

INTERROGATORY NO. 18

Please identify any company other than NS that provides for the development, implementation and/or maintenance of computer systems, software and associated documentations for the day-to-day operations of NS.

INTERROGATORY NO. 19

For each company identified in response to Interrogatory No. 18 that is a subsidiary or affiliate of NS Corp, or a joint venture involving NS Corp, please describe the services provided by the company and state if that company outsources any portion of its program development, computer program maintenance and/or other computer related activities. If so, please identify each company providing the outsourced services and describe the services outsourced.

INTERROGATORY NO. 20

Please describe the NS personnel, processes, utilization, computer programs, computer models and electronic data that is utilized by NS when developing or implementing GE Transportation's "RailEdge Movement Planner" for improving NS' operating performance.

INTERROGATORY NO. 21

Please describe the NS personnel, processes, utilization, computer programs, computer models and electronic data (both input data and output data) associated with each of the following models or tools used by NS to facilitate commercial and operational planning:

1. Rail Traffic Controller ("RTC");
2. Algorithmic Blocking and Classification System ("ABC")
3. Crew Transportation Services System ("TSS")
4. Locomotive Assignment and Routing System ("LARS")
5. Operating Plan Developer ("OPD")
6. Optimized Train Control ("OTC")
7. Locomotive Engineer Assist Display and Event Recorder ("LEADER")
8. Thoroughbred Yard Enterprise System ("TYES")
9. Thoroughbred Locomotive Management System ("TLMS")

10. Thoroughbred Operating Plan (“TOP”)
11. Operating Plan Adherence (“OPA”)
12. Local Operating Plan Adherence (“LOPA”)
13. Unified Train Control System (“UTCS”)
14. Wireless Locomotive Information System (“WiLIS”)
15. Wireless Event Recorder Information System (“WERIS”)
16. Crew Management System (“CMS”)
17. Digital Mapping Index (“DMI”)

NS’ detailed explanation should include a description of how each of these models/tools are utilized internally by NS alone or in conjunction with other models/tools.

INTERROGATORY NO. 22

Please describe in detail the computer program or processes used by NS to create and/or update the following:

- a. Track Charts
- b. Valuation Maps
- c. Other Engineering and track design elements, including but not limited to
 - i. Track geometry measurement data;
 - ii. Geospatial or geographical data (“GIS”);
 - iii. System track data by mile post, latitude and longitude including elevation, curves, turnouts, switches, signals, grade crossings, bridges, tunnels and other track data; and
 - iv. Track measurements.

INTERROGATORY NO. 23

Please describe the services, if any, that TDIS and/or TCS provides at each intermodal terminal or yard identified in NS' response to Interrogatory No. 13.

INTERROGATORY NO. 24

Please state whether or not NS has information and/or data in a computer-readable format or in its native format for the following items (each subpart cross-references a Request for Production and/or Interrogatory included herein):

- a. Operating Timetables (or the data identified in the timetables) [RFP #13]
- b. Station Lists [RFP #13]
- c. Station Books [RFP #13]
- d. Track Charts (or the data contained on the track charts) [RFP #13]
- e. Schematics of trackage at Origins [RFP #13]
- f. Schematics of trackage at Destinations [RFP #13]
- g. Mileage between railroad stations [RFP #13 and #27]
- h. Number of feet between mileposts [RFP #13]
- i. Operating Statistics and Density Data (including but not limited to train miles, train hours, locomotive unit miles, loaded car-miles, empty car-miles, net ton-miles, gross ton-miles (both including and excluding locomotives), number of trains, etc.) [RFP #18]
- j. Density [RFP #19]
- k. Rail line elevation [RFP #39]
- l. Curves [RFP #39]
- m. Communications signals [RFP #40]
- n. Yards [RFP #41]
- o. Track Input files for the RTC Model [RFP #43]
- p. Train Input files for the RTC Model [RFP #43]
- q. Form A and Form B files for the RTC Model [RFP #43]
- r. Output files for the RTC Model [RFP #43]
- s. Cycle times and movement data [RFP #44]
- t. Cycle times (including actual, projected, standard, expected and/or contractual) [RFP #45]

- u. Locomotives [RFP #52]
- v. Locomotive fuel consumption [RFP #56]
- w. Locomotive utilization and performance (including unit-miles, hours running, hours switching, hours out-of-service for repairs and hours stored useable) [RFP #59]
- x. Crew districts (including “from” and “to” stations, route miles and number of locomotives per train by train type) [RFP #65]
- y. Train dispatch priority and methodology for scheduling trains [RFP #72]
- z. End-of-train telemetry devices [RFP #76]
- aa. NS freight cars [RFP #77]
- bb. NS trailers and/or containers [RFP #78]
- cc. TDIS or TCS trailers and/or containers [RFP #79]
- dd. Auto rack cars [RFP #81]
- ee. Rail car repair and maintenance [RFP #82]
- ff. Rail car miles [RFP #82]
- gg. Shipper-owned and shipper-leased rail cars [RFP #83]
- hh. Intermodal and automotive railcars provided by a third party [RFP #83]
- ii. Locomotive repair and maintenance [RFP #85]
- jj. Locomotive unit-miles [RFP #85]
- kk. Number of shifts worked per year, years of employment and annual compensation for individual locomotive engineers, conductors, dispatchers and equipment inspectors [RFP #91]
- ll. Culverts [RFP #123]
- mm. Tunnels [RFP #127]
- nn. Bridges [RFP #129]
- oo. Highway Crossings [RFP #134]
- pp. Fences [RFP #142]
- qq. Geographic/Geospatial Information System (“GIS”) [RFP #147 and Interrogatory #22]
- rr. Track chart and engineering information [Interrogatory #22]

INTERROGATORY NO. 25

For each DuPont Shipment in Exhibits A and B of DuPont’s Verified Complaint, identify any other railroads that NS contends are necessary parties to this litigation; describe the relationship between NS and each railroad that NS has identified as a

necessary party; identify all agreements between NS and each railroad for handling and/or pricing the DuPont Shipments; and identify all agreements between NS and each railroad that restrict or limit the ability of each railroad to negotiate separately with DuPont for tariff and/or contract rates.

V. DOCUMENT PRODUCTION REQUESTS

REQUEST FOR PRODUCTION NO. 1

Please produce all documents related to the preparation of the single line and AAR Accounting Rule 11 rates for DuPont shipments identified on Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint, and all predecessor publications thereto, including but not limited to all documents used and/or relied upon in determining the formula for calculating the rates.

REQUEST FOR PRODUCTION NO. 2

Please produce all studies and analyses conducted by or for NS from January 1, 2003 to date related to (a) the profitability of NS' traffic by traffic group; and (b) the profitability of transportation service provided by NS for the account of DuPont.

REQUEST FOR PRODUCTION NO. 3

For each DuPont Shipment, either individually or aggregated in any form with other NS movements, produce all documents, including but not limited to any studies or other analyses, that refer or relate to actual or potential competition to NS from other rail

carriers or transportation modes, or to transportation alternatives that are or might be available to DuPont for such movements.

REQUEST FOR PRODUCTION NO. 4

For each of the commodities identified in Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint, either individually or aggregated in any form with other commodities, produce all documents, including but not limited to any studies or other analyses, that refer or relate to actual or potential competition to NS from other rail carriers or transportation modes for the transportation of such commodities, or to transportation alternatives that are or might be available for the movement of such commodities by rail.

REQUEST FOR PRODUCTION NO. 5

Produce all documents, including but not limited to any studies or other analyses, that refer or relate to actual or potential competition to NS from other rail carriers or transportation modes for transportation for the account of DuPont, or to transportation alternatives that are or might be available to DuPont for any of the DuPont Shipments, either individually or aggregated in any form with other NS movements or other commodities.

REQUEST FOR PRODUCTION NO. 6

For each DuPont Shipment, either individually or aggregated in any form with other NS movements, produce all documents, including but not limited to any studies or

other analyses, that refer or relate to: (a) the price that would or might be charged by other carriers or modes of transportation for transportation from Origin to Destination; and (b) the cost(s) that would or might be incurred by other carriers or modes of transportation for the transportation from Origin to Destination.

REQUEST FOR PRODUCTION NO. 7

For each of the commodities identified in Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint, either individually or aggregated in any form with other commodities, produce all documents, including but not limited to any studies or other analyses, that refer or relate to: (a) the price that would or might be charged by other carriers or modes of transportation for the transportation of such commodities; and, (b) the cost(s) that would or might be incurred by other carriers or modes of transportation for the transportation of such commodities.

REQUEST FOR PRODUCTION NO. 8

For each of the commodities identified in Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint, either individually or aggregated in any form with other commodities, produce all documents, including but not limited to any studies or other analyses, that refer or relate to the physical characteristics of such commodities and the effect of those physical characteristics on the ability to transport such commodities via modes other than rail.

REQUEST FOR PRODUCTION NO. 9

Produce all documents created, reviewed or referred to by NS, from January 1, 2006 through the present, to assess the market for transportation of each DuPont Shipment and to set rates on each DuPont Shipment, including but not limited to any competitive alternatives to NS rail transportation.

REQUEST FOR PRODUCTION NO. 10

Produce all documents created, reviewed or referred to by NS, from January 1, 2006 through the present, to assess the market for transportation of each commodity in Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint and to set rates on the movement of such commodities, including but not limited to any competitive alternatives to NS rail transportation.

REQUEST FOR PRODUCTION NO. 11

Produce all documents created, reviewed or referred to by NS, from January 1, 2006 through the present, to assess the market for transportation in any of the SARR States for each movement and commodity in Exhibits A and B (Parts 1-3) to DuPont's Verified Complaint and to set rates on the movement of such commodities, including but not limited to any competitive alternatives to NS rail transportation.

REQUEST FOR PRODUCTION NO. 12

Please produce for each NS territory or division located in the SARR States, organization charts which show each NS management and/or supervisory position, the

number of personnel in each position and the relationship or reporting authority and relative rank of each position. Please include organizational charts which include, but are not limited to, positions related to train operations, yard operations, maintenance of way, maintenance of equipment, engineering, and general and administrative functions. Also, include the relationship and reporting authority from each NS territory or division to NS senior management.

REQUEST FOR PRODUCTION NO. 13

Please produce current operating timetables (including special instructions and/or operating rule books), station lists, station books, track charts and "condensed profiles" (including schematics which identify the division, subdivision, and ownership status (*i.e.*, whether railroad-owned or privately-owned) of the tracks at the Origins and Destinations), and any other document containing mileage figures and/or the feet between mileposts, which are applicable to NS lines in the SARR States. Please provide the requested data in their native formats to the extent available (including all necessary documentation). If current versions of any of the requested documents are not available, please produce the most recent versions that are available.

REQUEST FOR PRODUCTION NO. 14

For each Intermodal terminal or yard, Automotive Distribution Facility and Bulk Transfer Facility located in the SARR states, please provide documents showing the track

layout, the length of each track, the ownership of each track and descriptions of the existing facilities.

REQUEST FOR PRODUCTION NO. 15

For all locations in the SARR States where NS interchanges railcars and/or trains with another railroad, please provide documents that: (a) describe the interchange procedures at each location; (b) identify the tracks (and length of each track) used for interchange purposes; and (c) identify the ownership of each track used for interchange purposes.

REQUEST FOR PRODUCTION NO. 16

Please provide documents setting forth NS' policy on the construction of industrial tracks to serve customers, including, but not limited to, construction specifications and how costs for all track construction from the connection to NS track to the industry (including all turnouts) are allocated between NS and the customer.

REQUEST FOR PRODUCTION NO. 17

Please produce copies of all documents, including agreements and/or understandings and all amendments and supplements thereto between NS and each railroad identified in Interrogatory No. 6, part "f", that refer or relate to the pricing and handling of all commodities, including but not limited to:

- a. Agreements or understandings pertaining to NS' payments to any of the identified railroads of a revenue factor, division, flat rate or other type of compensation for the railroad's portion of a movement;

- b. Locomotive run-through power or power sharing agreements or arrangements;
- c. Train crew run-through or train crew sharing agreements or arrangements;
- d. Any other agreements or arrangements pertaining to rates, surcharges, revenue sharing or operations;
- e. Any operating timetables (including special instructions and/or operating rule books), station lists, station books, track charts and "condensed profiles" for any of the above listed railroads; and
- f. Copies of all bills or invoices from 2008 to the present (including all supporting documents and data) rendered between NS and any of the identified railroads pursuant to each of the agreements and/or understandings produced in response to this Request for Production No. 17.

REQUEST FOR PRODUCTION NO. 18

For each NS line segment in the SARR States, please produce documents, in a computer-readable format to the extent available, which contain operating statistics and density data (including but not limited to train miles, train hours, locomotive unit miles, loaded car-miles, empty car-miles, net ton-miles, gross ton-miles (both including and excluding locomotives), number of trains, etc.) for all traffic by commodity for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 19

Please provide the following density information for NS' entire system for each year or partial year 2008 to the present in its native format (computer readable), including all record layouts, field descriptions, data definitions and data dictionaries/decoders

required to use the data. The density database or spreadsheet should include, at a minimum, the following data:

- a. Identification of the unique railroad divisions, subdivisions, and individual line segments for each unique density segment;
- b. Station name and SPLC at the beginning of a unique density segment and at the end of a unique density segment;
- c. Beginning and ending milepost for each unique density segment;
- d. Rail and track mileage for each unique density segment;
- e. (i) Total density (both directions including empty and loaded trains) by segment expressed in net ton-miles; or in the alternate, (ii) total density (both directions including empty and loaded trains) by segment expressed in gross ton-miles plus appropriate factors that can be used to convert gross ton-miles to net ton-miles on each unique density segment; and
- f. Density information (i) for segments that NS utilizes via trackage rights (a joint facility or other joint use agreement) on another railroad and (ii) for segments where other railroads operate by trackage rights (a joint facility or other joint use agreement) over NS segments and (iii) an identification of such densities in (i) and (ii) that are included in the total densities provided in response to subpart e. above.

REQUEST FOR PRODUCTION NO. 20

Please produce the data bases, data warehouses and computer programs (with all documentation related to these data bases and computer programs), in a computer-readable format, that include the information listed below for each movement handled by NS as originating, terminating, overhead or single-line carrier that traveled in any of the SARR States for each year or partial year 2008 to the present:

- a. Commodity (seven-digit Standard Transportation Commodity Code "STCC");
- b. Origin station and state;
- c. Destination station and state;
- d. The name of the customer, consignee, payee and shipper for each shipment record;
- e. For shipments that originated on NS' system, the date and time the shipment was originated;
- f. For shipments NS received in interchange, the on-junction station, state and SPLC;
- g. For shipments NS received in interchange, the road received from;
- h. For shipments NS received in interchange, the date and time the shipment was interchanged;
- i. For shipments given in interchange, off-junction station, state and SPLC;
- j. For shipments given in interchange, the road to which they were given;
- k. For shipments given in interchange, the date and time the shipment was interchanged;
- l. For shipments terminated on NS' system, the date and time the shipment was terminated;
- m. Origin Freight Station Accounting Code ("FSAC");
- n. Destination FSAC;
- o. Origin SPLC;
- p. Destination SPLC;

- q. Number of railcars;
- r. Number of intermodal containers/trailers
- s. Tons (Net);
- t. Railcar tare weight;
- u. Intermodal container/trailer tare weight;
- v. Total freight revenues from origin to destination, including any adjustments thereto, along with a description of the adjustment (i.e., add to or subtract from gross revenue);
- w. NS' share or division of the total freight revenues, including any adjustments thereto;
- x. Total revenues from surcharges (including but not limited to fuel surcharges), and whether such revenue from surcharges is included in the total freight revenues and NS' division thereof provided in response to Subparts (v) and (w) above;
- y. The contract, agreement, tariff, pricing authority, etc. that the shipment is billed under, including the amendment and item numbers;
- z. Waybill number and date;
- aa. TOFC/COFC plan;
- bb. Car/trailer/container initial for each car/trailer/container used to move the shipment (for intermodal movements provide both the railcar and container/trailer initials);
- cc. Car/trailer/container number for each car/trailer/container used to move the shipment (for intermodal movements provide both the railcar and container/trailer number);
- dd. The train identification number of all trains used to move the shipment;

- ee. The number of locomotives, by train identification, by segment, used to move the shipment;
- ff. The total horsepower, by train identification, by line segment, used to move the shipment;
- gg. The total gross trailing tons, by train identification, by line segment, for all trains used to move the shipment;
- hh. The station, state and SPLC where the traffic was interchanged between trains;
- ii. Total loaded movement miles;
- jj. The predominant route of movement for each shipment on NS' system that is associated with the loaded movement miles;
- kk. Total empty movement miles;
- ll. Miles used to derive applicable fuel surcharges;
- mm. Applicable fuel surcharge rate;
- nn. Total loaded miles on NS' system;
- oo. Total empty miles on NS' system;
- pp. AAR car-type code;
- qq. Provider of car and trailer/container (NS-owned, NS-leased, shipper, or foreign road);
- rr. Provide the intermodal service plan code and the intermodal line of business code for each intermodal shipment;
- ss. Provide the length, width and height for each car/container/trailer used to move the shipment; and
- tt. Provide the number of articulated wells included (where applicable) in an individual railcar used to move an intermodal (or other) shipment.

REQUEST FOR PRODUCTION NO. 21

Please produce documents, in a computer readable format to the extent available, which contain complete information (including all events) tracking and describing car, locomotive and train movements for each car, locomotive, and train moving on NS lines to, from, or through the SARR States for each year or partial year 2008 to the present. Provide location information by station, state and SPLC.

REQUEST FOR PRODUCTION NO. 22

Please provide copies of the NS train dispatcher sheets (and the data recorded in such sheets in a computer readable format, to the extent available), or other documents (e.g., conductor wheel reports) that record train movement data in a computer readable format to the extent available, for all car and train movements and yard and hub operations on NS to, from or through the SARR States for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 23

Please provide all documents, including programs, decoders, and instructions, necessary to utilize, evaluate and link the data produced in response to Request for Production Nos. 20, 21, and 22. Please include with this production a description of the relationship between the databases (e.g., whether there is a 1:1 ratio between databases, or whether one can expect to link 100% of the records in one file to another file). Please

also indicate which data fields are common (and may be used to link) to the provided databases.

REQUEST FOR PRODUCTION NO. 24

Please produce all studies, analyses, reports, or other documents that evaluate or report on any NS internal company program for improving operating performance of the railroad and driving greater network efficiencies.

REQUEST FOR PRODUCTION NO. 25

Please produce all studies, analyses, reports, or other documents that evaluate or report on any NS internal company program for better aligning NS' operating capabilities with its customer demand.

REQUEST FOR PRODUCTION NO. 26

Please provide NS' geographic information system ("GIS") that captures, stores, analyzes, manages and presents NS data that are linked by locations across the NS rail system.

REQUEST FOR PRODUCTION NO. 27

Please provide the NS mileage chart and/or table-based mileage matrix and/or routing table that identifies the NS rail mileage between any two points on the NS rail system based upon a predominant or expected route of movement.

REQUEST FOR PRODUCTION NO. 28

Please provide working copies of the following analytical models or tools (including all necessary input data files) defined in Interrogatory No. 21 and utilized by NS to develop commercial and operational plans for NS:

1. RTC;
2. ABC;
3. TSS;
4. LARS;
5. OPD;
6. OTC;
7. LEADER;
8. TYES;
9. TLMS;
10. TOP;
11. OPA;
12. LPOA;
13. UTCS;
14. WiLIS;
15. WERIS;
16. CMS; and
17. DMI.

REQUEST FOR PRODUCTION NO. 29

Please produce all transportation contracts, including all amendments and supplements thereto (or letters of understanding with appendices or attachments), and all tariffs, common carrier pricing authorities or other documents containing common carrier rate and service terms (collectively "pricing authorities") entered into, agreed to, established, or provided by NS which govern shipments handled by NS as originating, terminating, overhead, or single-line carrier to, from, or through any of the SARR States

in any of the years 2008 and beyond. For each pricing authority, please provide the traffic volumes and revenues associated with the movement of traffic under each pricing authority by traffic group (e.g., coal, ag, intermodal, etc.) and year for 2008 through the present.

REQUEST FOR PRODUCTION NO. 30

Please produce all forecasts and all documents related to forecasts or projections prepared by or for NS from 2008 through the present, or in NS' possession, of future traffic volumes and/or revenues for freight traffic by traffic group (including any breakdowns of any such forecasts or projections whether by commodity classification, geographic region, line segment, or any other category) moving over any portion of the NS system located in any of the SARR States. Documents responsive to this request include, but are not limited to, traffic projections prepared in connection with engineering studies, authorization for expenditures, marketing studies, operating expense budgets, capital budgets or mergers with or acquisitions of other carriers.

REQUEST FOR PRODUCTION NO. 31

Please produce all inflation and/or rail cost adjustment estimates or calculations in NS' possession or that NS prepared or caused to be prepared or purchased for each year or partial year 2008 to the present, including, but not limited to, any estimates relating to:

- a. The cost of acquiring equity;
- b. The cost of acquiring debt;

- c. General expenses, including, but not limited to, asset, equipment, materials and supplies, fuel and labor expense;
- d. Railroad productivity, including but not limited to commodity-specific productivity, asset productivity and expense productivity;
- e. Gross Domestic Product/Implicit Price Deflator;
- f. Producer Price Index - All Commodities;
- g. The U.S. Department of Energy's U.S. average price of West Texas Intermediate Crude Oil; and
- h. Land values along or adjacent to NS' right of way in the SARR states.

REQUEST FOR PRODUCTION NO. 32

Please produce all documents that relate to the development of the methodology for the calculation and imposition of the "fuel surcharges" described in NS' Freight Tariff NS 8003 and Freight Tariff NS 8004 and all predecessor documents, including but not limited to:

- a. Documents related to the determination to calculate the surcharge based upon a percentage of the amount of revenue of a line-haul movement;
- b. Documents related to the selection of the West Texas Intermediate Crude Oil average price as the benchmark for the calculation of the surcharge; and
- c. All analyses, studies or other documents which address the relationship, if any, between the revenues from the surcharge to any specific movement(s) or group of movement(s) and changes in the actual cost to NS of the fuel consumed by the locomotives used in that (those) movement(s).

REQUEST FOR PRODUCTION NO. 33

To the extent not produced in response to Request for Production No. 32, please produce all documents that relate to the consideration of other fuel surcharge methodologies that would be alternative to the methodologies described in NS' Freight Tariff NS 8003 and Freight Tariff NS 8004, and/or to the consideration of prospective changes or amendments to the methodologies described in said publications.

REQUEST FOR PRODUCTION NO. 34

Please produce the databases, data warehouses, and computer programs (with all documentation related to these databases and computer programs), in a computer readable format, sufficient to show all the data requested in DuPont's Request for Production No. 20 for each trailer, container, Auto Rack Car or freight car (used for a TDIS or TCS shipment) handled by NS, including but not limited to revenue received from TCS and/or TDIS customers.

REQUEST FOR PRODUCTION NO. 35

Please provide documents and data sufficient to link data records for trailer, container, Auto Rack Car and/or freight cars (used for a TDIS or TCS shipment) that NS will produce in response to Request for Production No. 34 to the corresponding data records appearing in the NS waybill/car movement/train movement records or files that NS will produce in response to DuPont's Request for Production Nos. 20, 21, and 22. If there are no records for NS flat cars, Auto Rack Cars or freight cars (used for a TDIS or

TCS shipment) in the NS files that NS will produce in response to DuPont's Request for Production Nos. 20, 21, and 22, please identify or produce documents sufficient to show the authority used by NS and/or TCS or TDIS to move flat cars with TCS and/or TDIS trailers or containers, Auto Rack Cars, and/or freight cars that move over NS lines (in both directions) in the SARR States.

REQUEST FOR PRODUCTION NO. 36

Please produce the databases, data warehouses, and computer programs (with all documentation related to these data bases, data warehouses, and computer programs), in a (computer readable) format, sufficient to show all of the data requested in DuPont's Request for Production No. 20, including but not limited to revenue that TDIS received from its customers ("freight revenue"), in connection with traffic described in DuPont's Request for Production No. 20, for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 37

Please produce documents which contain the following information for all coal mines that NS served or from which NS transported coal as an originating, intermediate, or terminating carrier that moved in one or more of the SARR States for each year or partial year 2008 to the present:

- a. Geographic location, *i.e.*, city, county and state;
- b. Railroad location, *i.e.*, railroad station name, SPLC, and milepost;

- c. Railroad mine identification number corresponding to the identification numbers contained in NS' computerized traffic data, *e.g.*, SPLC, FSAC or any other numbering system NS uses;
- d. Annual tonnages that NS transported from that mine;
- e. Track capacity in feet at each location separated between track owned by NS and track not owned by NS;
- f. The track configuration at each mine, with both the track that NS or another rail carrier owns (or jointly owns) and the mine-owned track clearly identified;
- g. Annual weeks of mine operation;
- h. Average tons per car loaded;
- i. Loading capacity (tons per hour); and
- j. If the mine has closed or ceased shipping coal, the date of such closure or of the last shipment.

REQUEST FOR PRODUCTION NO. 38

Please produce any studies, simulations, analyses and other documents in NS' possession from January 1, 2003 to present analyzing or related to the transportation of shipments to Destinations from Origins (a) by a rail carrier other than NS, and (b) by any mode of transportation other than rail. If no such documents exist, please confirm the same in the response to this Request.

REQUEST FOR PRODUCTION NO. 39

Please produce the following documents (in a computer-readable format to the extent available)

- a. Documents that show the rail line elevation and provide all information maintained by NS pertaining to those elevations including, but not limited to, division, subdivision, beginning milepost, ending milepost and elevation in feet above sea level for all NS line segments in the SARR states.
- b. Documents that identify all curves on the NS line segments in the SARR states and provide all information maintained by NS pertaining to those curves including, but not limited to, division, subdivision, beginning milepost, ending milepost and degree of curvature.

REQUEST FOR PRODUCTION NO. 40

Please produce documents (in computer readable format to the extent available) that identify and list the location and type of communications and signals used for train operations by milepost, division, and subdivision on all NS line segments in the SARR states.

REQUEST FOR PRODUCTION NO. 41

Please produce documents (in computer readable format to the extent available) that depict individual tracks, connections to the main line, turnouts, communications, signals and elevations for all yards on the NS system which are located in the SARR states.

REQUEST FOR PRODUCTION NO. 42

Please produce all documents related to unplanned track-related and operating-related incidents or outages that affected train operations from 2008 to the present in the SARR States. If the information requested would require a special study, please produce

random failure, outage or incident reports or similar documents, as kept in the ordinary course of business by NS, from which the requested data could be extracted.

REQUEST FOR PRODUCTION NO. 43

Please produce any studies or analyses currently being conducted, or that have been conducted since January 1, 2000, which model and evaluate rail operations over the entire NS rail system or any portion of the NS system that are based on the Rail Traffic Controller (“RTC”) model. In addition to the results of such studies or analyses, please provide the following RTC model information:

- a. Identify the version of the RTC computer model used in each study or analysis;
- b. Provide all electronic input files required to run the RTC model including, but not limited to, track input files, train input files, Form A and Form B files;
- c. Provide all electronic files generated as output from the RTC model for each study or analysis; and
- d. Provide track input files, train input files, Form A and Form B files, and required system files that develop the track layout of the entire or a majority of CSXT’s rail system. Specific RTC files to produce include:
 1. DIVISION
 2. ENVIRONMENT
 3. EQUATION
 4. EZONE
 5. LABEL
 6. LINE
 7. LINK
 8. NODE
 9. PERMIT
 10. SIGNAL

11. TOC
12. WORKSTATION
13. TRAIN
14. FORM_A
15. FORM_B
16. INPUT
17. OPTION

To the extent that you withhold any responsive files, documents, or information, please identify the withheld files, documents, and/or information, and describe the privilege or other reason for withholding.

REQUEST FOR PRODUCTION NO. 44

Please produce documents related to the measurement and/or analysis of cycle and/or transit times for all NS movements originating, terminating or passing through any of the SARR States for each year or partial year from 2008 to the present. Included in this Request are documents containing the following information for each movement, in a computerized format to the extent available.

- a. Waybill number and date;
- b. Car/trailer initial and number;
- c. Origin location, *i.e.*, station, state, milepost, FSAC and SPLC;
- d. Destination location, *i.e.*, station, state, milepost, FSAC and SPLC;
- e. Cycle and/or transit time from origin to destination;
- f. Location (*i.e.*, station, state, milepost, FSAC and SPLC) where each shipment enters into or originates in the SARR States;

- g. Location (*i.e.*, station, state, milepost, FSAC and SPLC) where each shipment departs from or terminates in the SARR States; and
- h. Cycle and/or transit time while movement is within the SARR States.

REQUEST FOR PRODUCTION NO. 45

Please provide documents, in a computer-readable format to the extent available, sufficient to show the projected and actual cycle times, and the standard or expected or contractual cycle time for each movement originating, terminating or passing through any of the SARR States for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 46

Please produce the computer model, supporting databases and supporting manuals that are used by NS to calculate the expected cycle time for a movement, including all necessary inputs required to run the model for each movement originating, terminating, or passing through any of the SARR States for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 47

Please produce documents that contain the following information for each year or partial year 2008 to present:

- a. The location(s) where car inspectors inspect trains in the SARR States;
- b. A description of the procedures followed by the car inspectors in preparing for and inspecting the trains;
- c. The total number of car inspections per tour of duty (by day of the week) and the total number of trains inspected per tour of duty (by day of the week), separated between trainload and unit trains and other than trainload or unit trains, for each location identified in response to (a) above;

- d. The number of car inspectors inspecting each train at each location identified in response to (a) above and the time spent by each inspector during each inspection;
- e. The daily or hourly rates of pay, including all additives, for the inspectors identified in response to (d) above;
- f. The number of trains that each car inspector at each location identified in response to (a) above inspects during his tour of duty;
- g. The other duties performed by the car inspectors identified in response to (d) above while on duty and not inspecting trains;
- h. The percentage of time the car inspectors identified in response to (d) above spend inspecting trains versus other assignments during their tour of duty;
- i. The materials and supplies used by the car inspectors at each of the locations identified in response to (a) above;
- j. The purchase price of each item identified in response to (i) above; and
- k. The total number of trains and cars inspected at each location identified in response to (a) above.

REQUEST FOR PRODUCTION NO. 48

For each car inspection location identified in response to Request for Production No. 47, subpart a., please produce documents that demonstrate for each year or partial year 2008 to the present:

- a. The number of cars inspected;
- b. The number of cars which are considered "bad ordered" and sent to a repair track in the vicinity of the inspection location;
- c. The number of cars which are considered "bad ordered" and required to be moved to a car repair facility; and

d. The time required to perform each inspection.

REQUEST FOR PRODUCTION NO. 49

Please produce copies of all contracts/agreements with third parties (including but not limited to shippers or receivers) related to the performance of car inspection functions with respect to all trains traversing any portion of the SARR States during each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 50

Please produce any computer programs or models NS uses or has used in the past five years to determine the number and types of railcars required to move its normally expected traffic volumes and the incremental or above-normal volumes moving in peak periods.

REQUEST FOR PRODUCTION NO. 51

Please produce documents for each year or partial year 2008 to the present which list by initial and unit number: (a) locomotives used in the SARR States; and (b) if such locomotives listed in response to (a) above were drawn from a pool, all the locomotives in the pool from which the locomotives were drawn.

REQUEST FOR PRODUCTION NO. 52

Please produce documents, in a computer-readable format to the extent available, which provide the following information for each of the locomotives contained in each of the listings produced in response to Request for Production No. 51:

- a. The locomotive initial and number;
- b. The manufacturer, if purchased;
- c. The lessor, if leased or rented;
- d. Model or type (e.g., SD-40-2);
- e. Horsepower;
- f. Capacity of its fuel tanks (gallons);
- g. Weight;
- h. Date of purchase or lease;
- i. Date first placed into service;
- j. The original cost plus the cost of any additions and betterments;
- k. Financing vehicle (e.g., equipment trust);
- l. Debt rate as a percent;
- m. Financing terms (in years);
- n. Annual depreciation;
- o. Annual depreciation as a percent;
- p. Current salvage value as a percent;
- q. Accrued depreciation;
- r. If leased, the type of lease (i.e., capital, operating, "power by the hour", etc.);
- s. If a capital lease, the capitalized value of the lease by locomotive or group of locomotives (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);

- t. If an operating lease, the quarterly, semi-annual, etc., lease payment by locomotive or group of locomotives covering the term of the lease (if a group of locomotives, the number of locomotives (by initial and number) and aggregate dollars);
- u. If leased or rented under a short-term or "power by the hour" agreement, the minimum annual fixed payment and the use payment (e.g., per kilowatt/hour, per diesel unit mile, etc.) per locomotive, the average annual payment per locomotive, and the annual locomotive unit-miles for each such locomotive, stated separately for coal service and other service; and
- v. The diesel unit-miles traveled each year or partial year from 2008 to the present in all types of service.

REQUEST FOR PRODUCTION NO. 53

Please produce all lease or rental agreements, including all amendments and supplements and copies of all billings, applicable to each leased or rented locomotive identified in response to Request for Production Nos. 51 and 52.

REQUEST FOR PRODUCTION NO. 54

Please produce documents which provide the following information for all NS helper services operated in the SARR States, separately for each helper service location, for each year or partial year 2008 to the present:

- a. "From" and "To" stations, SPLC's and mileposts where trains are actually helped;
- b. Number and type of locomotives (model and horsepower) involved per help;
- c. Round-trip mileage each locomotive travels per help;
- d. Number of total trains helped per crew assignment;

- e. Minimum train size/weight requiring helper service; and
- f. Crew size per crew assignment.

REQUEST FOR PRODUCTION NO. 55

Please produce documents sufficient to show the following information:

- a. The location(s) where locomotives are fueled in the SARR States;
- b. The actual amount of fuel used by the locomotives identified in response to Request for Production No. 51, either by individual locomotive, or collectively, for the most recent 12 months or calendar year;
- c. The total number of diesel unit miles generated by the locomotives for which fuel consumption data was provided in response to (b) above during the same time period used in response to (b) above.
- d. The method by which NS accounts for or records fuel usage for locomotives;
- e. Computer-readable versions (both compiled and non-compiled), including all supporting databases and necessary documentation, of any and all computer programs in NS' possession used to estimate the fuel usage of locomotives; and
- f. The same information for all road locomotives on the NS system in the same format as that given in the responses to (b), (c), and (e) above.

REQUEST FOR PRODUCTION NO. 56

Please produce all studies, analyses and related documents (including summaries, computer programs and all supporting databases and data), in a computer-readable format to the extent available, pertaining to the fuel consumption or the measurement of the fuel

consumption by NS trains (or the locomotives used on NS trains) moving through any portion of the SARR States for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 57

Please produce the train list(s) and train profile(s) showing the scheduled horsepower per ton ("HPT") for all trains operating to, from or within the SARR States. If the train list(s) or train profile(s) are not available, please provide other documents sufficient to show the scheduled HPT for the trains identified above.

REQUEST FOR PRODUCTION NO. 58

Please produce copies of the following documents:

- a. Documents which identify the locomotive tonnage ratings (*e.g.* horsepower per trailing ton) by line segment for NS' lines in the SARR States; and
- b. Tractive effort tables or other documents sufficient to show the tractive effort produced by the locomotives used to transport trains through any portion of the SARR States.

REQUEST FOR PRODUCTION NO. 59

Please produce documents, in a computer readable format to the extent available, which show locomotive utilization and locomotive performance (*e.g.*, locomotive unit-miles, locomotive hours running, locomotive hours switching, locomotive hours out-of-service for repairs and locomotive hours stored useable) for each locomotive that NS owned or leased for each year or partial year 2008 to the present and that NS used in providing transportation service in the SARR States.

REQUEST FOR PRODUCTION NO. 60

Please produce documents which describe and explain how NS assigns locomotives to each train on NS' system. If NS uses a computer model for this purpose, please produce the model and all supporting data bases and operating manuals necessary to operate the model.

REQUEST FOR PRODUCTION NO. 61

Please produce any studies performed by or for NS from January 1, 2003, to the present related to the increase in locomotives required to handle shipments during seasonal peak traffic periods. In addition, please provide the underlying databases that were used to perform each study.

REQUEST FOR PRODUCTION NO. 62

Please produce any studies performed by or for NS from January 1, 2003, to the present related to the increase in the number of railcars required to handle shipments during seasonal peak traffic periods. In addition, please provide the underlying databases that were used to perform each study.

REQUEST FOR PRODUCTION NO. 63

Please produce any locomotive spare margin study performed by NS from January 1, 2003, to date that includes (in whole or in part) locomotives used (a) in coal service and/or (b) in other service to, from or through the SARR States. In addition, please produce the underlying databases that were used to perform each study.

REQUEST FOR PRODUCTION NO. 64

Please produce any railcar spare margin study performed by or for NS from January 1, 2003, to the present that includes (in whole or in part) railcars used: (a) in coal service; and/or (b) in other service to, from or through the SARR states. In addition, please produce the databases that were used to perform each study.

REQUEST FOR PRODUCTION NO. 65

Please produce documents or data, in a computer-readable format to the extent available, which provide the following information for each crew district in the SARR States:

- a. Each crew district identified by "from" and "to" stations;
- b. The route miles in each such crew district; and
- c. The number of locomotive units per train by train type (i.e., coal, general freight, automotive, intermodal, etc.) and the extent to which the locomotive units are in a distributed power train configuration;

REQUEST FOR PRODUCTION NO. 66

Please identify all origins where NS pays an outside contractor or third party to load coal trains, and with respect to each such origin, please produce the following for each year 2008 to the present:

- a. Copies of all third party loading crew contracts/agreements, including negotiated rates and associated rate escalation clauses and operating provisions, as well as a description of the service performed by the contractor; and

- b. All records in NS' or its loading contractor's possession relating to the contractor's handling of the trains, including but not limited to the time when each train was in the possession or under the control of the loading contractor.

REQUEST FOR PRODUCTION NO. 67

Please provide a copy of any NS operating rules related to the special handling of hazardous materials (provide the requested information by class of hazardous material), including, but not limited to, rules related to:

- a. Placement of cars containing hazardous materials in a train;
- b. The number and location of buffer cars required, if any, when handling hazardous materials in trains; and
- c. Special routing instructions for trains containing hazardous materials.

REQUEST FOR PRODUCTION NO. 68

For each NS rail yard referred to in Interrogatory No. 7, please produce documents sufficient to identify switch crew assignments, hump crew assignments, Local Train assignments, the number of cars handled over each hump yard per day and the number of hazardous material cars handled at each hump yard per day which by-pass the hump operation at each yard.

REQUEST FOR PRODUCTION NO. 69

Please produce documents that contain the information requested by Interrogatory No. 8.

REQUEST FOR PRODUCTION NO. 70

Please produce copies of any documents, reports, analyses or studies provided to any Federal or state agencies which discuss or describe NS' compliance with regulations for handling, routing or proposed routing of hazardous materials.

REQUEST FOR PRODUCTION NO. 71

Please produce a copy of NS' rules pertaining to train handling, including but not limited to measures for conserving fuel.

REQUEST FOR PRODUCTION NO. 72

Please produce documents, in a computer-readable format to the extent available, which describe (a) how NS determines the dispatch priority given to each train type (*e.g.*, doublestack, priority intermodal, through, general freight, unit coal, *etc.*); and (b) NS' methodology for scheduling all trains by train type.

REQUEST FOR PRODUCTION NO. 73

Please produce all agreements between NS and CSXT or their affiliates, and any amendments thereto, implementing the grant to NS of equal access to the MGA coal region in connection with the Conrail control transaction approved by STB in Finance Docket No. 33388 (Decision No. 89, Ordering Paragraph 26), including, but not limited to, agreements governing NS' and CSXT's operations on the MGA lines and any payments made between NS and CSXT related to capital improvements, maintenance expenses and/or operating expenses on the MGA lines.

REQUEST FOR PRODUCTION NO. 74

Please produce all documents prepared from January 1, 2003, to date related to any planned capacity enhancements or capital improvements on NS rail lines in the SARR States, including, but not limited, to documents containing estimated or actual construction costs and documents related to changes in rail rates or rail pricing strategy, in connection with any such plans.

REQUEST FOR PRODUCTION NO. 75

Please produce the following for all joint facility or joint use agreements (including, but not limited, to trackage rights agreements, joint or common ownership agreements and lease agreements and any amendments thereto) between NS and any other rail carrier or other entity applicable to any of the railroad lines and/or facilities in the SARR States:

- a. Copies of all agreements (including all amendments and supplements);
- b. Copies of all bills from 2008 to the present (including all supporting documentation and data);
- c. The NS density over the joint facility for each year or partial year 2008 to the present; and,
- d. The density of all other rail carriers or entities over the joint facility for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 76

For each year or partial year 2006 to the present, please produce documents that contain the following information, in a computer-readable format to the extent available, for each of the end-of-train telemetry devices ("EOTD") used on any trains that traverse any portion of the SARR States:

- a. The date of purchase;
- b. The original cost and the cost of any additions and betterments;
- c. The debt rate as a percent;
- d. The financing terms (in years);
- e. The annual depreciation;
- f. The annual depreciation rate as a percent;
- g. The salvage value as a percent; and
- h. The accumulated depreciation.

REQUEST FOR PRODUCTION NO. 77

Please produce documents for each year or partial year 2006 to the present that contain the following, in a computer readable format, for each freight car purchased or leased by NS (including freight cars currently on order and privately-owned freight cars leased by NS that maintain the private owner=s car initial and number):

- a. Initial and number;
- b. Manufacturer;

- c. Lessor, if leased;
- d. AAR car type;
- e. Tare weight;
- f. Purchase or order date, if purchased;
- g. Lease or order date, if leased;
- h. Total purchase price, if purchased;
- i. If leased, the type of lease (e.g., capital, operating, etc.) and term;
- j. If leased, the amount and frequency of lease payments;
- k. If purchased, the AFE applicable to each purchased freight car; and
- l. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules.

REQUEST FOR PRODUCTION NO. 78

Please produce documents for each year or partial year 2006 to the present that contain the following, in a computer readable format, for each trailer (chassis) or container purchased or leased by NS (including trailers/containers currently on order and privately-owned trailers and containers leased by NS):

- a. Initial and number;
- b. Lessor, if leased;
- c. Tare weight;
- d. Purchase or order date, if purchased;
- e. Lease or order date, if leased;

- f. Total purchase price, if purchased;
- g. If leased, the type of lease (e.g., capital, operating, etc.) and term;
- h. If leased, the amount and frequency of lease payments;
- i. If purchased, the AFE applicable to each purchased trailer or container; and
- j. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules.

REQUEST FOR PRODUCTION NO. 79

Please produce documents for each year or partial year 2006 to the present, that contain the following, in a computer readable format if available, for each trailer (chassis) or container purchased or leased by TCS and/or TDIS (including privately-owned trailers or containers leased by TCS and/or TDIS and trailers or containers currently on order):

- a. Initial and number;
- b. Lessor, if leased;
- c. Tare weight;
- d. Purchase or order date, if purchased;
- e. Lease or order date, if leased;
- f. Total purchase price, if purchased;
- g. If leased, the type of lease (e.g., capital, operating, etc.) and term;
- h. If leased, the amount and frequency of lease payments;
- i. If purchased, the AFE applicable to each purchased trailer or container; and

j. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules.

REQUEST FOR PRODUCTION NO. 80

Please produce documents sufficient to describe, in detail, all facilities, equipment, infrastructure or other physical assets of any kind, other than those that are described in Request for Production Nos. 77, 78, and 79, that are or have been owned or leased by NS, TCS and/or TDIS, and used by TCS and/or TDIS in connection with the provision of services for which it receives revenue, for each year or partial year 2006 to the present.

REQUEST FOR PRODUCTION NO. 81

Please produce documents for each year or partial year 2006 to the present, that contain the following, in a computer readable format if available, for each Auto Rack Car and/or Auto Rack which attaches to a flat car purchased or leased by NS (including privately-owned Auto Rack Cars leased by NS and Auto Rack Cars currently on order):

- a. Initial and number;
- b. Lessor, if leased;
- c. Tare weight;
- d. Purchase or order date, if purchased;
- e. Lease or order date, if leased;
- f. Total purchase price, if purchased;
- g. If leased, the type of lease (e.g., capital, operating, etc.) and term;

- h. If leased, the amount and frequency of lease payments;
- i. If purchased, the AFE applicable to each purchased trailer or container; and
- j. If leased, the lease agreement including all supplements, amendments, exhibits and applicable schedules.

REQUEST FOR PRODUCTION NO. 82

Please produce all railcar repair and maintenance records, reports, databases and related documents which include or record rail car repair and maintenance expenses for each year or partial year 2008 to the present, including but not limited to all input data to Schedules 415 and 755 of NS' R-1, and the total rail car-miles corresponding to these repair and maintenance expenses, in a computer readable format to the extent possible, for all freight cars in the NS system. To the extent that these records, reports and databases do not include all car repair and maintenance amounts reported in R-1 Schedule 410, please identify the expenses that are excluded.

REQUEST FOR PRODUCTION NO. 83

For each year or partial year 2008 to the present, please produce documents which contain the following information (in a computer-readable format, if available) with respect to each shipper-owned and shipper-leased railcar and each intermodal and automotive railcar provided by a third party moving over any part of the NS system located in the SARR States:

- a. Initial and number of the car;

- b. The AAR car type;
- c. The length, tare weight, load capacity (number of containers, trailers or automobiles) and load limit (tons) of the car (for intermodal and automotive cars only);
- d. The cost to NS for use of the car;
- e. The terms of any mileage allowance agreement covering the car;
- f. Whether the car is subject to a zero-based mileage agreement;
- g. Whether the car hire paid on the car is subject to refund of the payments under certain contractual conditions; and
- h. The year of manufacture of the car.

REQUEST FOR PRODUCTION NO. 84

Please produce all railcar maintenance agreements with outside contractors, including all supplements, attachments, exhibits and schedules, for each year or partial year 2006 to the present, for all the cars on NS' system. Also provide the documents identifying: (a) the dollar amount paid for each service performed under the agreement by individual car or by car type; and (b) the number of car-miles corresponding to the amounts referenced in Request for Production No. 84, subpart a.

REQUEST FOR PRODUCTION NO. 85

Please produce all NS locomotive maintenance and repair records and/or reports and related documents for each year or partial year 2006 to the present, which provide locomotive maintenance, repair and overhaul expenses by locomotive or locomotive type or series (or by other basis in which records are kept) and the total locomotive unit-miles

corresponding to these maintenance, repair and overhaul expenses for the locomotives identified in response to Request for Production No. 52 above. To the extent that these records and/or reports do not include all locomotive repair, maintenance, and overhaul amounts reported in R-1 Schedule 410, please identify those expenses that are not included.

REQUEST FOR PRODUCTION NO. 86

Please produce all locomotive maintenance agreements, including all supplements, attachments, exhibits and schedules, with outside contractors and provide, for each year or partial year 2006 to the present for all locomotives in the NS fleet under such maintenance agreements: (a) the amount paid for each locomotive or by locomotive type in total and broken down by each service performed under the agreement; and (b) the number of locomotive unit miles corresponding to the amounts listed above.

REQUEST FOR PRODUCTION NO. 87

Please produce documents that show in detail all items of expense and the associated dollar amount of each expense item included in NS' R-1 Annual Report to the STB Schedule 410, Column (c), Lines 202, 403, and 411, for years 2008 and 2009.

REQUEST FOR PRODUCTION NO. 88

Please identify all locations in the SARR States where NS or a third party/contractor acting for or on behalf of NS performs fueling of locomotives, and

produce documents sufficient to show the following information with respect to

locomotive fueling at each location:

- a. The source(s) of the fuel, including the name and location of the vendor(s) who provide the fuel to NS and the refinery(ies) or other location from which the fuel is obtained;
- b. The method and cost of transporting and dispensing the fuel from the refinery(ies) or other locations from which the fuel is obtained to the location where the fueling of locomotives is performed;
- c. The method by which fuel is dispensed into locomotives, *i.e.*, from fixed fueling platforms or by direct-to-locomotive (tanker truck) service; and
- d. A description of the facilities and equipment (including but not limited to fuel storage tanks) at each location where NS has fixed fueling platforms.

REQUEST FOR PRODUCTION NO. 89

Please produce copies of all contracts/agreements with third parties related to the performance of locomotive fueling functions for all locomotives that are used on any portion of the NS system located in the SARR States.

REQUEST FOR PRODUCTION NO. 90

For each year or partial year 2008 to the present, please produce the detailed annual and quarterly Wage Forms A and B that support the summary Wage Forms A and B provided to the STB.

REQUEST FOR PRODUCTION NO. 91

Please produce for each year or partial year 2008 to the present documents (in a computer readable format) which show for each NS individual locomotive engineer,

conductor, dispatcher and equipment inspector, the number of shifts worked per year, length of employment, and annual compensation.

REQUEST FOR PRODUCTION No. 92

Please produce documents sufficient to show the applicable wage rates for NS' maintenance of way employees by job classification for each year 2008 to the present.

REQUEST FOR PRODUCTION NO. 93

Please produce documents showing the amount(s) paid by NS to a recruitment firm or firms for executive search service in each of the years 2006 to the present. The documents should include the amount paid by individual, the position of the individual hired, and the basis for the recruitment firm's fee schedule. As used in this Request, the term "executive" means those employees so defined or grouped in NS' Wage Forms A and B.

REQUEST FOR PRODUCTION NO. 94

Please provide documents sufficient to show NS' existing maintenance-of way plan and staffing in the SARR States including the maintenance-of-way districts and/or crews employed by NS to maintain the (a) track, (b) signals and communications facilities, (c) bridges, and (d) all other facilities and structures in the SARR States, the number of NS employees by job classification presently assigned to each maintenance-of-way district or crew on both a permanent and a seasonal basis, and any changes in the

maintenance districts, crews, and number and classification of employees that have occurred since January 1, 2003.

REQUEST FOR PRODUCTION NO. 95

For maintenance of way (including inspection of bridges, tunnels and highway crossings) and/or construction of or on NS lines in the SARR States performed by contractors for the period from 2007 to the present, please produce copies of all bills for services, documents which contain a description of the line location of the contract inspection, repairs (including vegetation control, rail grinding and other maintenance items) and/or construction, and the details of the work performed, including labor and materials. If NS does not maintain copies of any of these documents, produce whatever documents NS does maintain or has available to it describing the costs incurred by NS and the details of the work performed, in a computer readable form if applicable (including all necessary documentation).

REQUEST FOR PRODUCTION NO. 96

Please provide documents showing the amounts paid by NS for training employees by year from 2007 to the present and the number of employees trained including, but not limited to, training employees hired for each of the following positions:

- a. Experienced locomotive engineers;
- b. Experienced locomotive conductors;
- c. Locomotive conductors training to become engineers;
- d. Novice conductors;

- e. Train dispatchers;
- f. Information technology programmers;
- g. Supervisors of maintenance operations;
- h. Maintenance crew members; and
- i. Equipment inspectors.

The amounts paid by NS for training employees should include, but not be limited to, wages paid per employee during classroom training, wages paid per employee during field or on the job training, fringe benefits paid during classroom training, fringe benefits paid during field or on the job training, costs for classroom training per employee, costs for on the job training or field training per employee, expenses for room and board during classroom training and during field training per employee. Also please provide the number of weeks of classroom training required for each type of employee and the number of weeks of on the job or field training required for each type of employee.

REQUEST FOR PRODUCTION NO. 97

Please produce documents showing the ad valorem taxes that NS paid for each year 2008 to the present to each of the SARR States, together with documents showing the total route-miles and total track-miles NS owned or owns in the SARR States for each year 2008 to the present. Also, produce documents showing how the amount of ad valorem taxes due were calculated by state in each year.

REQUEST FOR PRODUCTION NO. 98

Please provide documents for each year or partial year 2008 to the present which provide NS' loss and damage costs separately for all commodities NS carries on a system-wide basis.

REQUEST FOR PRODUCTION NO. 99

Please provide information related to any liability expense incurred as a result of NS' handling hazardous materials for each year 2007 to the present. For each liability expense incurred, please provide the following:

- a. The total amount of the liability expense;
- b. The STCC of hazardous material involved with the incurrence of the expense;
- c. The number of rail cars involved with the incurrence of the expense; and
- d. Any reimbursement of all or a portion of the liability expense, or other reimbursement which offset all or a portion of the liability expense received by NS from any third party.

REQUEST FOR PRODUCTION NO. 100

Please provide information related to any additional operating or administrative expenses incurred by NS for each year from 2007 to the present as a result of handling hazardous materials, including, but not limited to, items such as switching expenses, insurance expenses, station clerical, car cleaning expenses, accident clean-up expenses and/or billing expenses. For each expense identified, please provide:

- a. The total amount of the annual expense for each year;

- b. The class or classes of hazardous material to which the expense applies; and
- c. The number of annual carloads handled each year to which the expense applies.

REQUEST FOR PRODUCTION NO. 101

Please provide documents identifying the maintenance-of-way equipment owned or leased by NS that is assigned to the maintenance-of-way districts identified in response to Request for Production No. 94. For each piece of owned equipment, please provide the original cost and the year purchased. For each piece of leased equipment, please provide a copy of the lease and the lease payment schedule. For each piece of equipment, either leased or owned, please provide documents that show the annual cost of maintenance and fueling.

REQUEST FOR PRODUCTION NO. 102

Please produce any and all agreements between NS and NS Corp related to the "fee for management services" that NS Corp charges NS for services and the "revenue-based licensing fee" that NS Corp charges NS for use of certain intangible assets owned by NS Corp as described in NS' 2009 Class I Annual Report Form R-1, page 10.

REQUEST FOR PRODUCTION NO. 103

Please produce documents identifying and explaining for each year or partial year 2008 to the present:

a. The procedures by which NS Corp develops bills or invoices to NS for the "fee for management service it performs for NS Rail" and the "revenue-based licensing fee" referenced in NS' 2009 Class I Annual Report Form R-1, page 10; and

b. The STB account(s) in which NS records the payments made to NS Corp for the "fee for management services" and "revenue-based licensing fee" referenced in NS' 2009 Class I Annual Report Form R-1, page 10.

REQUEST FOR PRODUCTION NO. 104

Please produce documents identifying and explaining the procedures by which NS develops the bills or invoices to TCS and TDIS for rail-related transportation services. For each component of each NS bill or invoice, please identify and produce documents identifying the STB accounts in which NS records the payments received from TCS and TDIS, as well as the following information for TCS and TDIS for each year or partial year 2008 to the present:

- a. Total revenues;
- b. Amounts received to cover transloading costs;
- c. Amounts received to cover payments for costs associated with other transportation modes, e.g., over-highway truck costs, water vessel costs, etc.;
- d. Amounts paid to NS;
- e. Overhead and administrative costs; and
- f. Margin or profit.

REQUEST FOR PRODUCTION NO. 105

Please provide documents sufficient to show the following for each intermodal yard or terminal served by TDIS or TCS in the SARR States:

- a. Each asset owned or leased by NS;
- b. Each asset owned or leased by TCS;
- c. Each asset owned or leased by TDIS;
- d. Each asset owned or leased by an entity other than NS, TCS or TDIS; and
- e. All acquisition information and lease or other use payment information for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 106

Please provide documents sufficient to show the following for each Automotive Distribution Facility served by NS in the SARR States:

- a. Each asset owned or leased by NS;
- b. Each asset owned or leased by an entity other than NS; and
- c. All acquisition information and lease or other use payment information for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 107

Please provide documents sufficient to show the following for each Bulk Transfer Facility served by NS in the SARR States:

- a. Each asset owned or leased by NS;
- b. Each asset owned or leased by an entity other than NS; and
- c. All acquisition information and lease or other use payment information for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 108

Please produce documents sufficient to show the location, size (including square footage, number and lengths of tracks, capacity, etc.), components (such as equipment and machinery), original cost and year built for each facility located on any portion of NS' system in the SARR States that falls within each of the following categories of facilities:

- a. Roadway maintenance facilities;
- b. Locomotive maintenance facilities;
- c. Locomotive servicing facilities;
- d. Administrative facilities;
- e. Rail yards;
- f. Dispatch centers;
- g. Freight car repair and maintenance facilities;
- h. Scales;
- i. Wastewater treatment plants;
- j. Snowshed facilities;
- k. Train, yard and engineman facilities;
- l. Automotive Distribution Facilities;
- m. Intermodal terminals and yards;
- n. Bulk Transfer Facilities;

- o. River transload facilities; and
- p. Lake transload facilities.

REQUEST FOR PRODUCTION NO. 109

Please provide for each year 2008 to the present for each facility identified in response to Request For Production No. 108, subparts (l), (m), (n), (o) and (p):

- a. The annual costs to operate each facility separated by function; and
- b. The annual throughput of each facility (e.g., automobiles, containers, trailers, carloads, etc.).

REQUEST FOR PRODUCTION NO. 110

Please produce documents supporting the security procedures at each location identified in response to Interrogatory Nos. 7 (i), 13 (f), 15 (d) and 17 (f) including, but not limited to, the following for each year or partial year 2006 to the present:

- a. Staffing requirements by job classification;
- b. Material requirements;
- c. Transportation requirements;
- d. Facility requirements;
- e. Other requirements not included in a, b, c or d above;
- f. The annual costs incurred for the security at each location broken down by category of expense, e.g., labor, materials, purchased services, etc.;
- g. The entity responsible for paying the annual security costs at each location, e.g., NS Corp, NS, TCS, TDIS, Transworks, etc., and the portion paid by each entity in dollars or percentages; and
- h. The STB accounts where any costs incurred by NS are recorded.

REQUEST FOR PRODUCTION NO. 111

Please produce documents sufficient to describe, in detail, all personnel employed by TCS and TDIS in connection with the provision of services for which each receives freight revenue, for each year or partial year 2008 to the present, including but not limited to each employee's position and responsibilities; annual compensation (including all benefits); and for employees who do not dedicate 100% of their on-duty time to the provision of services described herein, the percentage of each such employee's time that is so dedicated.

REQUEST FOR PRODUCTION NO. 112

Please produce documents sufficient to describe, in detail, all services purchased by NS, TCS and/or TDIS from third parties that are necessary or incidental to the provision of services by each for which each receives revenue, including but not limited to all amounts paid for such third party services and the contracts and/or agreements governing the amounts paid, for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 113

For each company identified as providing outsourced services in response to Interrogatory No. 18, please provide documents which describe the services outsourced, the fees paid for the outsourced services, and the analyses which developed the estimated and/or actual savings realized by NS and each of its subsidiaries from such outsourcing.

REQUEST FOR PRODUCTION NO. 114

Please produce all documents relating to any contribution or payment by any governmental or quasi-governmental entity (including, without limitation, AMTRAK) for construction, upgrading and/or maintenance of any NS track, facility or structure (including bridges, at-grade highway crossings and grade separated crossings) and/or operating expenses on any of NS' lines located in the SARR States.

REQUEST FOR PRODUCTION NO. 115

Please provide documents containing the following information separately for ultrasonic rail testing and track geometry testing:

- a. The cost per mile, or other applicable unit of measure, for each year or partial year 2008 to the present; and
- b. NS' specifications for the frequency of such testing.

REQUEST FOR PRODUCTION NO. 116

Please produce copies of the most current land valuation maps for NS rail lines located in the SARR States, and all documents (including but not limited to deeds or other instruments of grant or conveyance) related to the parcels identified on those maps.

REQUEST FOR PRODUCTION NO. 117

Please produce documents identifying all donated rights of way and/or land grants (including easements) obtained by NS or NS' predecessors in connection with the construction of any rail lines or facilities located in the SARR States. The documents provided should include the following for each donated or easement land parcel:

- a. The NS parcel number;
- b. The exact location of the parcel, including county and state;
- c. Valuation section and map number;
- d. Original railroad acquiring the parcel;
- e. Type of instrument and/or title, e.g. easement, right-of-way deed, quit claim deed, condemnation, grant, etc.
- f. The size of the parcel in square feet or acres;
- g. The date of the transaction;
- h. The names of the parties to the transaction; and
- i. Any dollar amount associated with the transaction.

REQUEST FOR PRODUCTION NO. 118

Please produce all documents related to any sale, appraisal, abandonment or acquisition of land (improved and unimproved) that NS completed in the SARR States, in each year 2007 to the present, including but not limited to documents showing the location of the parcel, size of the parcel, the valuation of the parcel by NS, the sale or acquisition price, a description of any improvements to the parcel, the value of any improvements, the date of sale, and any characteristics of the parcel such as land use, utilities, access and topography.

REQUEST FOR PRODUCTION NO. 119

Please produce documents sufficient to show the following for construction projects that NS has undertaken since January 1, 2007:

- a. Construction standards, details and project specifications, including but not limited to: track structures and designs; bridges; culverts; yard and roadway buildings; fueling facilities; maintenance facilities and waste water treatment facilities;
- b. Whether or not the project was performed “under traffic”, i.e., traffic continued to move through the construction area;
- c. Estimating procedures for track construction projects; and
- d. Estimating procedures for non-track construction projects.

REQUEST FOR PRODUCTION NO. 120

Please produce all of NS’ price list books governing prices for construction and maintenance materials (including but not limited to weights of rail from 115 lb to 141 lb, turnouts, ties, fasteners, lubricators, plant and field welds, fencing, roadway signs, track geometry cars, hot bearing and dragging equipment detectors, and related tools), or other documents utilized by NS’ engineering personnel for estimating costs of maintenance and construction projects for each year or partial year 2007 to the present. To the extent that the charges for transportation and delivery of materials are not included in the prices shown, please produce documents sufficient to show such charges for all materials.

REQUEST FOR PRODUCTION NO. 121

Please produce documents sufficient to show the following with respect to grading construction activities undertaken or proposed at any time, or currently ongoing, on any portion of NS' system located in SARR States:

- a. Number of cubic yards of excavation of:
 - i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material;

- b. Number of cubic yards of embankment of:
 - i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material;

- c. Number of cubic yards of borrow of:
 - i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material;

- d. Grading construction data for each construction specification measured by NS including without limitation, roadbed width, side slope ratio, track center distance, presence of access roads, impact of grading activities on right-of-way width, use of geotextiles, use of water, soil stabilization, and width and depth of side ditches;

- e. Number of route miles, separated between single track main, double track main, triple track main, etc., corresponding to the cubic yard information described in paragraphs (i) through (iv) of Subparts (a), (b) and (c) of this Request;

- f. Number of track-miles corresponding to the cubic yards in paragraphs (i) through (iv) of Subparts (a), (b) and (c) of this Request;

- g. All of the different types of equipment (and the associated tasks) used to:
 - i. Excavate common earth;
 - ii. Excavate loose rock;
 - iii. Excavate solid rock;
 - iv. Excavate unclassified material; and
 - v. Obtain borrow material;
- h. Linear feet of pipe installed for lateral drainage;
- i. Number of cubic yards of rip rap placed for the protection of the roadway;
- j. Location, type and quantity of retaining walls;
- k. Construction method, including but not limited to the number of cubic yards of masonry or other similar material, used for retaining walls;
- l. Number of acres cleared;
- m. Number of acres grubbed; and
- n. Number of acres seeded.

REQUEST FOR PRODUCTION NO. 122

To the extent NS incurred any of the following expenses during the years 2007 to the present, please produce documents sufficient to show the costs NS incurred during each year for the following:

- a. Cost per cubic yard of excavation for:
 - i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material;
- b. Cost per cubic yard of embankment for:
 - i. Common earth;
 - ii. Loose rock;

- iii. Solid rock; and
 - iv. Unclassified material;
- c. Cost per cubic yard of borrow for:
- i. Common earth;
 - ii. Loose rock;
 - iii. Solid rock; and
 - iv. Unclassified material;
- d. Cost per cubic yard of rip rap (installed), separated between material and labor;
- e. Unit cost for each material type used for retaining walls, separated between material and labor;
- f. Cost per acre for clearing timber and any credits reflecting the sale of timber;
- g. Cost per acre for grubbing;
- h. Cost per acre for seeding;
- i. Cost per acre for weed spray (including necessary chemicals);
- j. Cost per acre or per mile for brush cutting; and
- k. Cost per square yard for geotextile fabric.

REQUEST FOR PRODUCTION NO. 123

Please produce documents sufficient to show culvert/drainage pipe locations (*i.e.*, railroad milepost), size (diameter), length, height of cover, number of tracks crossed, type, and cost of material and installation for each, for NS' lines located in the SARR States.

REQUEST FOR PRODUCTION NO. 124

Please produce documents sufficient to show the following information with respect to ballast and sub-ballast used on NS' system during each of the years 2007 to the present:

- a. The average cost per cubic yard for ballast, by type;
- b. The average cost per cubic yard for the transportation and handling of ballast;
- c. The average length of haul represented by the value(s) in subpart (b) above;
- d. The average cost per cubic yard for sub-ballast, by type;
- e. The average cost per cubic yard for transportation and handling of sub-ballast;
- f. The average length of haul represented by the value(s) in Subpart (e) above;
- g. The names and locations of all quarries supplying such ballast or sub-ballast; and
- h. The unit prices from all quarries listed in response to Subpart (g).

REQUEST FOR PRODUCTION NO. 125

Please produce documents sufficient to show the following for each construction and rehabilitation project which exceeded \$500,000 in cost and was completed by NS, or an outside contractor acting on NS' behalf, since January 1, 2007:

- a. The date the project was started;
- b. The date the project was completed;
- c. Whether the project was new construction or rehabilitation;

- d. Whether or not the project was performed “under traffic”, i.e., traffic continued to move through the construction area;
- e. A complete copy of the Authorization for Expenditure ("AFE") and description of all columns and data contained with the AFEs;
- f. A complete copy of the Roadway Completion Report or any successor document; and
- g. All invoices underlying each AFE and/or Roadway Completion Report.

REQUEST FOR PRODUCTION NO. 126

Please produce documents, including but not limited to AFEs, construction plans, engineering estimates, bid tabs, contractor invoices, and construction specifications for any projects that a carrier other than NS has undertaken in the SARR States since January 1, 2007, for which NS paid for some or all of the project, including, but not limited to, any construction within the boundaries of Conrail Shared Assets Areas.

REQUEST FOR PRODUCTION NO. 127

Please produce documents sufficient to show the following information for each tunnel located on any portion of the NS system in the SARR States:

- a. Location, i.e., line segment name and number;
- b. Beginning and ending mileposts;
- c. Length (in feet);
- d. Height above the rail (in feet);
- e. Number of tracks in the tunnel;

- f. Method, time period and cost of construction; and
- g. Maintenance costs for each year or partial year 2007 to the present.

REQUEST FOR PRODUCTION NO. 128

Please produce documents sufficient to show the tunnels or former tunnels located on NS' system in the SARR States that have been constructed or removed (by daylighting or other means) by NS since 2000, detailing location (line segment and milepost), length, number of tracks in the tunnel, method and time period of construction, and the cost per linear foot to construct or remove the tunnel. If no cost data is available for any such tunnels, please produce documents sufficient to show the cost per linear foot of any tunnel construction or removal performed anywhere on NS' system since 2000.

REQUEST FOR PRODUCTION NO. 129

Please produce bridge lists or other documents detailing the following information for all bridges located on NS' system in the SARR States:

- a. Location (milepost, division and subdivision);
- b. Type;
- c. Number of tracks;
- d. Total length;
- e. Number of spans;
- f. Type(s) of spans;

- g. Length of each span;
- h. Load rating;
- i. Clearances;
- j. Height;
- k. Skew;
- l. Curvature;
- m. A description of what is being crossed (e.g., name of body of water, highway or road (including name or number), navigable waterway, etc.);
- n. Whether or not it is a movable bridge; and
- o. Whether or not it is in service.

REQUEST FOR PRODUCTION NO. 130

Please produce documents sufficient to show the following information related to the construction or replacement, in part or in whole, of each bridge on NS' system in the SARR States from 2004 to the present:

- a. The location of the bridge, by line segment and milepost;
- b. The design for each bridge;
- c. An itemized listing of the bridge components being constructed or replaced (including quantities);
- d. The estimated cost, by component, for each of the components (identified in response to Subpart c. above) being constructed or replaced;

- e. The actual cost, by component, for each of the components (identified in response to Subpart c. above) being constructed or replaced;
- f. The total cost of the bridge;
- g. The total length of the bridge;
- h. Whether the project was new construction or rehabilitation;
- i. Whether or not the project was performed “under traffic”, i.e., traffic continued to move through the construction area;
- j. All costs incurred as a function of performing the project under traffic, e.g., flagging costs, temporary signal costs, realignments, delays and all other costs that would not be incurred if the bridge was new construction;
- k. The construction documents and contracts for the construction and/or rehabilitation; and
- l. Any cost sharing between NS and another entity.

REQUEST FOR PRODUCTION NO. 131

Please produce documents listing the items, the cost of each item and the quantity of each item installed on NS’ system related to the construction and (during each of the years 2007 to the present) operation of the centralized traffic control signal system(s) or any other traffic control system in use on the NS system. Please indicate whether the costs include additional services such as installation, design planning, electrical drops for utilities, and/or transportation. If the costs for additional services are not included, please provide each cost separately for the additional services.

REQUEST FOR PRODUCTION NO. 132

Please produce documents containing the following information for each NS communications site (defined as a location with a microwave tower, a land mobile radio ("LMR") tower, a tower used for both purposes, or a location where communications equipment (microwave or LMR) is located that does not include a tower) located in the SARR States:

- a. The number of microwave towers, LMR towers, combined towers, or other communications equipment location (shown separately for each category);
- b. The latitude and longitude coordinates of each tower or other communications equipment location;
- c. The height of each tower in feet above the ground and also in feet above sea level;
- d. The number of microwave antennae on each tower and the status of each antenna (i.e., whether it is operational);
- e. The number of LMR antennae on each tower and the status of each antenna (i.e., whether it is operational);
- f. The latitude and longitude coordinates of other communications sites that can link via microwave or radio from this site or a topological map of the communication system; and
- g. The acres of land owned or leased by NS for these sites and the cost of purchase or lease.

REQUEST FOR PRODUCTION NO. 133

Please produce documents sufficient to show:

- a. NS' specifications for the construction of communications sites (as defined in Request for Production No. 132);
- b. Identification and total number of NS route miles in the SARR States that are covered by microwave communications;
- c. Identification and total number of NS route miles in the SARR States that are not covered by microwave communications;
- d. The cost, manufacturer and model number of each item and the quantities used for the construction and operation of the microwave radio and/or land mobile radio communications system on the NS system during each of the years 2007 to the present; and
- e. The annual spot maintenance costs incurred by NS for the microwave and/or land mobile radio tower communications system per tower and by device type, in the SARR States, as well as the overall spot maintenance costs systemwide.

REQUEST FOR PRODUCTION NO. 134

Please produce documents in a computer readable format, if available, containing the following information for each NS at-grade and grade-separated highway crossing on the NS system in the SARR States:

- a. Geographic location, *i.e.*, city, county and state;
- b. Rail location, *i.e.*, railroad, line name, division, subdivision and milepost;
- c. Whether public or private;
- d. Name of road being crossed;

- e. Width;
- f. Length;
- g. Type of construction;
- h. Number of tracks;
- i. Type of protective devices;
- j. Date of initial installation at the location;
- k. Total cost of the initial installation and the amount borne by NS, if any;
and
- l. Identification of the party responsible for ongoing maintenance of any such structures.

REQUEST FOR PRODUCTION NO. 135

For each year 2007 to the present, please produce documents that contain the following information with regard to the NS system's highway and at-grade railroad crossings:

- a. The various sizes, compositions and costs per linear foot (installed) of a one-lane private road crossing over a single line of track;
- b. The various sizes, compositions and costs per linear foot (installed) of a two-lane public highway crossing over a single line of track;
- c. The various sizes, compositions and costs per linear foot (installed) of a four-lane public highway crossing over a single line of track;
- d. The installed cost of signs for a private road crossing (if necessary);

- e. The installed cost of signs for a public highway crossing;
- f. The installed cost of each of the different types of protective devices identified in the response to Subpart (i) of Request For Production No. 134;
- g. A list identifying each component required for an automatic type interlocking (assuming a diamond crossing);
- h. The cost of each of the components identified in response to Subpart (g) above and the cost of installation for each year or partial year 2007 to the present;
- i. The costs for a 16-foot and 24-foot cattle guard and the cost of installation for each year or partial year 2007 to the present; and
- j. Any additional costs incurred.

REQUEST FOR PRODUCTION NO. 136

For each highway crossing identified in response to Request for Production No. 134, please provide documents, for each year or partial year 2007 to the present, that show, separately for each crossing, any monies received by NS from any other party to compensate NS for the use of the crossing, including, but not limited to, monies for construction, maintenance and easement payments.

REQUEST FOR PRODUCTION NO. 137

Please produce documents containing the following information with regard to NS' hot bearing and dragging/failed equipment detectors ("FED"):

- a. The criteria for determining the appropriate spacing of the devices along NS' main lines;

- b. The location of FEDs for the portion of NS' system in the SARR States;
and
- c. The cost of FEDs for each year 2007 to the present.

REQUEST FOR PRODUCTION NO. 138

Please produce documents sufficient to describe the specifications, functions, operation and costs, during each of the years 2007 to the present, of any communications system equipment other than microwave towers used to transmit data from devices such as mobile two-way radios, portable (hand-held) two-way radios, FEDs, AEI scanners and EOTDs across all or any part of the NS system.

REQUEST FOR PRODUCTION NO. 139

Please produce documents sufficient to show:

- a. The locations and quantities of fiber optic cabling installed on NS rights-of-way in the SARR States;
- b. The date and amount of initial payments made by NS for granting the use of NS' right of way for fiber optic cable installation and an identification of the NS line segments(s) by milepost covered by each payment;
- c. The amount of frequency of recurring payments made to NS for granting the use of NS' right of way for fiber optic cable installation and an identification of the NS line segments(s) by milepost covered by each payment;
- d. The bandwidth capacity of the fiber optic cabling identified in Subpart (a);

- e. The entity that owns and operates the fiber optic cabling identified in Subpart (a);
- f. The costs to NS, if any, for installing the fiber optic cable identified in Subpart (a);
- g. Whether NS is permitted to use any of the fiber optic cable identified in Subpart (a) and an identification of the sections used by NS; and
- h. The amount, if any, NS pays the carriers for use of the fiber optic cable identified in Subpart (g).

REQUEST FOR PRODUCTION NO. 140

If NS utilizes the fiber optic cable(s) identified in response to Request for Production No.139, please provide documents sufficient to show:

- a. An identification, and the total number, of NS route miles in the SARR States that are covered by fiber optic backbone communications;
- b. The cost, manufacturer and model number of each item and the quantities used for the construction and operation of the fiber optic communications system on the NS system during each of the years 2007 to the present; and
- c. The annual spot maintenance costs incurred by NS for the fiber optic communications system and by device type, in the SARR States, as well as the overall spot maintenance costs systemwide for each of the years 2007 to the present.

REQUEST FOR PRODUCTION NO. 141

Please provide documents identifying each electrical connection in the SARR States that is used to provide power to devices including, but not limited to, the CTC system and other signal devices, hot box detectors, failed equipment detectors, powered

road crossings, warning devices and power switches, and provide the following for each such connection:

- a. The location of the connection by line segment and milepost;
- b. The source of the electricity;
- c. The amount NS paid for each connection and the date; and
- d. NS costs for each billing period from 2008 to the present.

REQUEST FOR PRODUCTION NO. 142

Please produce documents sufficient to show the location, linear feet, type of fencing (*e.g.*, snow fence), cost per foot and year installed for all fencing currently in place on the portion of the NS system in the SARR States.

REQUEST FOR PRODUCTION NO. 143

Under *Alternative Methods of Accounting for Railroad Track Structures*, 367 I.C.C. 157, 180 (1983), NS is required to submit a standard "unit of property" that distinguishes between when a certain cost should be expensed or capitalized. Please produce NS' most recent, STB approved property "unit of property" and the supporting information and data for those units.

REQUEST FOR PRODUCTION NO. 144

Please produce an unredacted and fully executed copy of NS' Positive Train Control Implementation Plan filed with the Federal Railroad Administration as required by 49 CFR §236.1009(a) and §236.1011.

REQUEST FOR PRODUCTION NO. 145

Please provide all studies, analyses, detailed plans and estimates developing NS' estimated costs to design, install and maintain the Positive Train Control system detailed in NS' Positive Train Control Implementation Plan filed with the Federal Railroad Administration on April 16, 2010.

REQUEST FOR PRODUCTION NO. 146

Please provide documents related to the amount of Bonus Depreciation claimed by NS Corp separately for 2008 and 2009 on NS Corp's Federal Tax Returns in Schedule 4562. The amount should be separated by asset class and include the historical cost recorded for the assets related to the claimed bonus depreciation, including all schedules and worksheets showing the calculation and development of bonus depreciation allowed under the Economic Stimulus Act of 2008 and the American Reinvestment and Recovery Act.

REQUEST FOR PRODUCTION NO. 147

Please provide the following NS Geographic/Geospatial Information System ("GIS") data. The GIS data should be viewable, readable, and writable with no access

limitations. The GIS data should be able to be read using current off the shelf (COTS) software, using either ESRI ArcView (ArcGIS) or MapInfo Pro (MapInfo / PitneyBowes):

- a. Map Projections defined per layer;
- b. GIS files associated with and/or created by the GIS software system, to include:
 1. In their original vector, or other, file format to include file types such as:
For ESRI application software:
 - a) .shp (shape files, feature geometry)
 - b) .shx (shape file indexes)
 - c) .dbf (attribute format)
 - d) .prj (projection format)
 - e) .sbn, .sbx (spatial indexes of features)
 - f) .fbn, .fbx (spatial index of features)
 - g) .ixs (geocoding indexes)
 - h) .mxs (geocoding indexes)
 - i) .atx (attribute index)
 - j) .shp.xml (metadata in xml)
 - k) .cpg (code page)
 2. For MapInfo application software:
 - a) .dat (attribute data)
 - b) .tab (MapInfo table, stores types of data)
 - c) .id (stores links to graphic and database information)
 - d) .map (stores graphic and geographic information)
 - e) .ind (index files)
 3. For other GIS systems: provide native files.
- c. Map data geocoded to a standard available coordinate system;
- d. Map data associated to latitude and longitude coordinates without limits placed on decimal accuracy; and

- e. Map Layers (either separate object layers, or in layers with each object having attributes defining the item's entity type and attributes)
 - 1. Track detail
 - a) Rail stations and/or nodes (an entity with all attributes)
 - b) Rail segments and/or links between nodes (an entity with all attributes)
 - c) Siding (an entity with all attributes)
 - d) Grade (an entity, or attributes associated to track)
 - e) Curves (an entity, or attributes associated to track)
 - f) Mileposts (an entity, with a unique identifier, milepost name, milepost code, latitude and longitude coordinates with no limits on geocoded coordinate decimal values) that match the mileposts in the transactional "Event" data provided in response to Request For Production Nos. 21 and 22
 - g) Elevation in feet above sea level per rail node/milepost
 - h) Time tables
 - i) Signals
 - 2. Mileage between track nodes;
 - 3. Land parcels; and
 - 4. Terminals (including, but not limited to, NS rail yards, Automotive Distribution Facilities, Bulk Transfer Facilities and intermodal facilities).

REQUEST FOR PRODUCTION NO. 148

For each subpart of Interrogatory No. 24 that NS answers in the affirmative, produce the related information and/or data in a computer-readable format or in its native format to the extent not already produced in that format in reply to any other Interrogatory or Request for Production.

REQUEST FOR PRODUCTION NO. 149

Please produce all transportation contracts, including all amendments and supplements thereto (or letters of understanding with appendices or attachments), tariffs, common carrier pricing authorities, or other documents containing common carrier rate and service terms (collectively “pricing authorities”), entered into, agreed to, established, or provided by TCS and/or TDIS that govern shipments handled by NS as originating, terminating, overhead, or single-line carrier to, from, or through any of the SARR States in any of the years 2008 and beyond. For each pricing authority, please provide the traffic volumes and revenues associated with the movement of traffic under each pricing authority by traffic group (e.g., coal, agricultural, intermodal, etc.) and year for 2008 through the present.

REQUEST FOR PRODUCTION NO. 150

Please produce all forecasts and all documents related to forecasts or projections prepared by or for TCS and/or TDIS from 2008 through the present, or in TCS’ and/or TDIS’ possession, of future traffic volumes and/or revenues for freight traffic by traffic group (including any breakdowns of any such forecasts or projections whether by commodity classification, geographic region, line segment, or any other category) moving over any portion of the NS system located in any of the SARR States. Documents responsive to this request include, but are not limited to, traffic projections prepared in

connection with engineering studies, authorization for expenditures, marketing studies, operating expense budgets, capital budgets, or mergers with or acquisitions of other carriers.

REQUEST FOR PRODUCTION NO. 151

Please produce copies of any documents, reports, analyses, or studies provided to any Federal or state agencies which discuss or describe TCS' and/or TDIS' compliance with regulations for handling, routing, or proposed routing of hazardous materials.

REQUEST FOR PRODUCTION NO. 152

Please produce all TCS and/or TDIS railcar maintenance agreements with outside contractors, including all supplements, attachments, exhibits, and schedules, for each year or partial year 2006 to the present, for all TCS and/or TDIS cars moving on NS' system. Also provide the documents identifying (a) the dollar amount paid for each service performed under the agreement by individual car or by car type; and (b) the number of car-miles corresponding to the amounts referenced in Request for Production No. 152, subpart a.

REQUEST FOR PRODUCTION NO. 153

Please provide information related to any liability expense incurred as a result of TCS' and/or TDIS' handling hazardous materials for each year or partial year 2007 to the present. For each liability expense incurred, please provide the following:

- a. The total amount of the liability expense;
- b. The STCC of hazardous material involved with the incurrence of the expense;
- c. The number of rail cars, containers, or trailers involved with the incurrence of the expense; and
- d. Any reimbursement of all or a portion of the liability expense, or other reimbursement which offset all or a portion of the liability expense received by TCS and/or TDIS from any third party.

REQUEST FOR PRODUCTION NO. 154

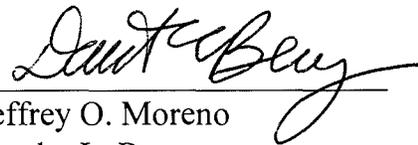
Please provide information related to any additional operating or administrative expenses incurred by TCS and/or TDIS for each year from 2008 to the present as a result of handling hazardous materials, including, but not limited to, items such as switching expenses, insurance expenses, station clerical, car, container or trailer cleaning expenses, accident clean-up expenses, and/or billing expenses. For each expense identified, please provide:

- a. The total amount of the annual expense for each year;
- b. The class or classes of hazardous material to which the expense applies; and
- c. The number of annual carloads handled each year to which the expense applies.

REQUEST FOR PRODUCTION NO. 155

Please provide copies of NS Corp's 2008 and 2009 state income tax returns for the SARR States, including all state tax credit worksheets.

E.I. DuPont De Nemours and Company



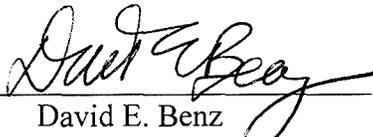
By: Jeffrey O. Moreno
Sandra L. Brown
David E. Benz
Jason Tutrone
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036
(202) 331-8800

Dated: December 2, 2010

Certificate of Service

I hereby certify that on this 2nd day of December, 2010, a copy of the foregoing Discovery Requests was served by electronic delivery on:

G. Paul Moates
Paul A. Hemmersbaugh
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005



David E. Benz

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

E.I. DUPONT DE NEMOURS & COMPANY)	
)	
Complainant)	
v.)	Docket No. NOR 42125
)	
NORFOLK SOUTHERN RAILWAY COMPANY)	
)	
Defendant)	

**COMPLAINANT’S SECOND SET OF DISCOVERY REQUESTS
TO DEFENDANT NORFOLK SOUTHERN RAILWAY COMPANY**

Complainant E.I. du Pont de Nemours & Company (“DuPont”), pursuant to 49 C.F.R. §§ 1114.26 and .30, hereby submits its Second Set of Discovery Requests to Defendant, Norfolk Southern Railway Company (“NS”). The numbering of Interrogatories and Requests for Production in this Second Set of Discovery Requests is continued from the previous set of discovery requests.

Responses to these requests should be delivered to the offices of Thompson Hine LLP, 1920 N Street, N.W., Suite 800, Washington, D.C. 20036, within twenty (20) days, unless the parties agree otherwise. DuPont is prepared to cooperate with NS to facilitate the expeditious production of documents with minimum practical burden.

DEFINITIONS AND INSTRUCTIONS

DuPont hereby incorporates by reference all of the Definitions and Instructions from “Complainant’s First Set of Discovery Requests to Defendant Norfolk Southern Railway Company. DuPont also adds the following definition:

187. “Issue Commodity” means any commodity identified in Exhibits A and B to DuPont’s Complaint.

188. "TBT" means Thoroughbred Bulk Terminals and/or its subsidiaries and affiliates.

189. "TIH" means "Materials Poisonous by Inhalation" and "Materials Toxic by Inhalation," as defined at 49 C.F.R. 171.8.

INTERROGATORIES

INTERROGATORY NO. 26

Please identify the parent company of TBT.

INTERROGATORY NO. 27

Please state if the revenues earned and expenses incurred by TBT are included in NS's combined rail reporting in its R-1 Annual Report to the STB.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 156

Please produce documents sufficient to describe, in detail, all facilities, equipment, infrastructure or other physical assets of any kind that are, or have been, owned or leased by NS or TBT and used by TBT in connection with the provision of services for which NS receives revenue, for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 157

Please produce documents identifying and explaining the procedures by which NS develops the bills or invoices to TBT for rail-related transportation services. For each component of each NS bill or invoice, please identify and produce documents identifying the STB accounts in which NS records the payments received from TBT, as well as the following information for TBT for each year or partial year 2008 to the present:

- a. Total revenues;
- b. Amounts received to cover transloading costs;
- c. Amounts received to cover payments for costs associated with other transportation modes, e.g., over-highway truck costs, water vessel costs, etc.;
- d. Amounts paid to NS;
- e. Overhead and administrative costs; and
- f. Margin or profit.

REQUEST FOR PRODUCTION NO. 159

Please produce documents sufficient to describe, in detail, all personnel employed by TBT in connection with the provision of services for which it receives freight revenue, for each year or partial year 2008 to the present, including but not limited to each employee's position and responsibilities; annual compensation (including all benefits); and for employees who do not dedicate 100% of their on-duty time to the provision of services described herein, the percentage of each such employee's time that is so dedicated.

REQUEST FOR PRODUCTION NO. 160

Please produce documents sufficient to describe, in detail, all services purchased by TBT from third parties that are necessary or incidental to the provision of services by TBT for which it receives revenue, including but not limited to all amounts paid for such third party services and the contracts and/or agreements governing the amounts paid, for each year or partial year 2008 to the present.

REQUEST FOR PRODUCTION NO. 161

Please produce all transportation contracts, including all amendments and supplements thereto (or letters of understanding with appendices or attachments), tariffs, common carrier pricing authorities, or other documents containing common carrier rate and service terms (collectively “pricing authorities”), entered into, agreed to, established, or provided by TBT that govern shipments handled by NS as originating, terminating, overhead, or single-line carrier to, from, or through any of the SARR States in any of the years 2008 and beyond. For each pricing authority, please provide the traffic volumes and revenues associated with the movement of traffic under each pricing authority by traffic group (e.g., coal, agricultural, intermodal, etc.) and year for 2008 through the present.

REQUEST FOR PRODUCTION NO. 162

Please produce all forecasts and all documents related to forecasts or projections prepared by or for TBT from 2008 through the present, or in TBT’s possession, of future traffic volumes and/or revenues for freight traffic by traffic group (including any breakdowns of any such forecasts or projections whether by commodity classification, geographic region, line segment, or any other category) moving over any portion of the NS system located in any of the SARR States. Documents responsive to this request include, but are not limited to, traffic projections prepared in connection with engineering studies, authorization for expenditures, marketing studies, operating expense budgets, capital budgets, or mergers with or acquisitions of other carriers.

REQUEST FOR PRODUCTION NO. 163

Please produce copies of any documents, reports, analyses, or studies provided to any Federal or state agencies which discuss or describe TBT's compliance with regulations for handling, routing, or proposed routing of hazardous materials.

REQUEST FOR PRODUCTION NO. 164

Please provide information related to any liability expense incurred as a result of TBT's handling of hazardous materials for each year or partial year 2008 to the present. For each liability expense incurred, please provide the following:

- a. The total amount of the liability expense;
- b. The STCC of hazardous material involved with the incurrence of the expense;
- c. The number of rail cars, containers, or trailers involved with the incurrence of the expense; and
- d. Any reimbursement of all or a portion of the liability expense, or other reimbursement which offset all or a portion of the liability expense received by TBT from any third party.

REQUEST FOR PRODUCTION NO. 165

Please provide information related to any additional operating or administrative expenses incurred by TBT for each year from 2008 to the present as a result of handling hazardous materials, including, but not limited to, items such as switching expenses, insurance expenses, station clerical, car, container or trailer cleaning expenses, accident clean-up expenses, and/or billing expenses. For each expense identified, please provide:

- a. The total amount of the annual expense for each year;

- b. The class or classes of hazardous material to which the expense applies; and
- c. The number of annual carloads handled each year to which the expense applies.

REQUEST FOR PRODUCTION NO. 166

Please produce the following documents regarding NS' use of other carrier's locomotives (or foreign locomotives) from 2008 to the present:

- a. All agreements (or any arrangements other than agreements) applicable to use of the locomotive(s) including but not limited to run-through or horsepower equalization agreements or arrangements;
- b. The itemized amount of compensation or equalization for use of the locomotive, by each category of compensation or equalization, including but not limited to fuel, servicing and maintenance;
- c. The methodology used for computing the compensation or equalization;
- d. The service units covered by the compensation or equalization listed by locomotive initial, locomotive number and locomotive model or type; and,
- e. The diesel unit-miles traveled by each foreign locomotive covered by each agreement each year from 2008 to the present.

REQUEST FOR PRODUCTION NO. 167

Please produce all documents, from 2005 to the present, that (a) address the willingness and desire of NS to transport TIH commodities and/or any Issue Commodity that is a TIH; (b) constitute, refer or relate to internal policies or decisions to discourage transportation of TIH commodities on NS; and (c) refer or relate to decisions by NS whether or not to compete to with other modes or rail carriers to transport TIH commodities.

REQUEST FOR PRODUCTION NO. 168

Please produce all documents, from 2005 to the present, that (a) address the willingness and desire of NS to transport hazardous materials, other than TIH commodities; (b) constitute, refer or relate to internal policies or decisions to discourage transportation of hazardous materials, other than TIH commodities, on NS; and (c) refer or relate to decisions by NS whether or not to compete with other modes or rail carriers to transport hazardous materials, other than TIH commodities.

Respectfully submitted,



Jeffrey O. Moreno
Sandra L. Brown
Jason D. Tutrone
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036
(202)331-8800

*Counsel to E.I. du Pont de Nemours &
Company*

March 14, 2011

Certificate of Service

I hereby certify that on March 14, 2011, a copy of the foregoing Second Set of Discovery Requests was served by electronic delivery on:

G. Paul Moates
Paul A Hemmersbaugh
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005



Jeffrey O. Moreno

American Railroads' President and Chief Executive Officer, Edward D. Hamberger, made on March 17, 2011, before the Subcommittee on Railroads, Pipelines, and Hazardous Materials of the Transportation and Infrastructure Committee of the U.S. House of Representatives. The Manion/Hamberger Joint Statement included an assertion that unless the Federal Railroad Administration ("FRA") changed its proposed rule requiring the installation of Positive Train Control ("PTC") on rail lines that carried Toxic By Inhalation ("TIH") traffic in 2008, railroads would have to spend more than \$500 million to deploy PTC on more than 10,000 miles of rail lines on which neither passenger or TIH materials will move in 2015. *See* Manion/Hamberger Joint Statement at 9.

INTERROGATORIES

INTERROGATORY NO. 28

Please identify the specific NS line segments included in the 10,000 miles of rail line referenced in the Manion/Hamberger Joint Statement on which NS does not expect TIH and passenger traffic will move in 2015.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 169

Please provide all NS analyses and forecasts which support NS' position that certain passenger and TIH traffic will not move in 2015 over NS's portion of the 10,000 miles referenced in the Manion/Hamberger Joint Statement.

REQUEST FOR PRODUCTION NO. 170

Please provide any statements, references and/or forecasts from TIH shippers that they will not transport TIH materials over NS rail lines included in the 10,000 miles referenced in the Manion/Hamberger Statement beginning in 2015.

Respectfully submitted,



Jeffrey O. Moreno
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Jason D. Tutrone
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(202)331-8800

*Counsel to E.I. du Pont de Nemours &
Company*

September 9, 2011

Certificate of Service

I hereby certify that this 9th day of September 2011, I served a copy of the foregoing via e-mail and first class mail upon:

G. Paul Moates
Paul Hemmersbaugh
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
pmoates@sidley.com
phemmersbaugh@sidley.com

Counsel for Norfolk Southern Railway Company



Jason D. Tutrone

REQUEST FOR PRODUCTION NO. 171

Please produce an electronic database that identifies the specific NS milepost associated with each of the unique NS SPLC and each of the unique NS operating station code that are included on the entire NS system.

REQUEST FOR PRODUCTION NO. 172

Please produce all computer programs and simulation software currently used by NS to simulate or model a rail network equipped with Positive Train Control ("PTC"), including, but not limited to:

1. A functional version of the Rail Traffic Controller ("RTC") model with the PTC functionality enabled.
2. Other software that is capable of simulating operations of a railroad equipped with PTC.
3. Software that is capable of developing the operating benefits of installing PTC over any given segment of a railroad network.

Respectfully submitted,



Jeffrey O. Moreno
Sandra L. Brown
Jason D. Tutrone
Thompson Hine LLP
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Washington, D.C. 20036
(202)331-8800

Counsel to E.I. du Pont de Nemours & Company

September 29, 2011

Certificate of Service

I hereby certify that this 29th day of September 2011, I served a copy of the foregoing via e-mail and first class mail upon:

G. Paul Moates
Paul Hemmersbaugh
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
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