

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 646 (Sub-No. 3)

**WAYBILL DATA RELEASED IN THREE-BENCHMARK RAIL RATE
PROCEEDINGS**

**REPLY COMMENTS OF
CSX TRANSPORTATION, INC.**

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Dated: June 1, 2010

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CSX Transportation, Inc. (“CSXT”) respectfully submits these brief additional Reply Comments on the Notice of Proposed Rulemaking issued in this proceeding on April 2, 2010 (“NPRM”), which proposed to permit parties to Three Benchmark rate proceedings to select comparison group movements from four historical years of Waybill Sample data.¹ The Opening Comments of the American Chemistry Council and its co-commenters (“Joint Shippers”) claim that a Three Benchmark case brought by DuPont against CSXT involving nitrobenzene shipments had an insufficient number of potential comparison movements and thus demonstrates that four years of historical Waybill Sample data may be necessary in cases involving commodities that are not “Toxic By Inhalation” chemicals. *See* Joint Shipper Comments at 7. But the facts and the evidence filed in that case provide no basis for the use of additional outdated waybill data from prior years.

The Board did not express any concern about the adequacy of the number of movements in the final comparison group in its decision. *See* Decision, *DuPont v. CSXT*, No.

¹ CSXT submitted joint opening and reply comments with Norfolk Southern Railway Company (“NS”), and those comments set forth CSXT’s position on most issues in this proceeding. CSXT submits these separate Reply Comments to respond to an argument on which it has unique factual knowledge not available to NS.

42101 (June 30, 2008). Nor did DuPont itself suggest that the final comparison group was too small, or that the number of comparable movements available in the Waybill Sample was insufficient. *See generally* Complainant’s Rebuttal Evidence, *DuPont v. CSXT*, No. 42101 (April 4, 2008).

Moreover, DuPont’s opening comparison group drew seventy-seven percent (77%) of the comparison traffic from the Waybill Sample for the most recent year, zero movements from the oldest year’s Waybill Sample, and only two movements from the second-oldest year’s Waybill Sample. *See* DuPont Reply Ex. TDC-8.² Thus, the increase in the size of DuPont’s comparison group as a result of the availability of three more years of data was marginal and of little significance. Thus, the *DuPont/CSXT* nitrobenzene case does not support an argument for the use of three additional years of outdated Waybill Sample data in Three Benchmark cases. The Joint Shippers’ contrary suggestion is not borne out by the facts of the case.

Further, to the extent the Board considers sample size an issue that should be addressed, CSXT has suggested that the Defendant carrier be required to produce the most recent twelve months of actual traffic data for the commodity at issue in the case. *See* NS/CSXT Joint Comments at 16; NS/CSXT Reply Comments at 6 n.6. This production could be done relatively quickly and efficiently, and without significantly affecting the time to litigate a Three Benchmark case.

² Because Exhibit TDC-8 contained other Highly Confidential CSXT information, it was designated “Highly Confidential” and filed under seal. The number of comparison movements proffered by the parties, however, is not Highly Confidential. The Board may verify the accuracy of the calculations in the text by reviewing the exhibit.

CONCLUSION

For the foregoing reasons, and all of the reasons set forth in NS's and CSXT's Opening and Reply Comments, the Board should not adopt the NPRM's proposed change to the Three Benchmark approach.

Respectfully submitted,

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CERTIFICATE OF SERVICE

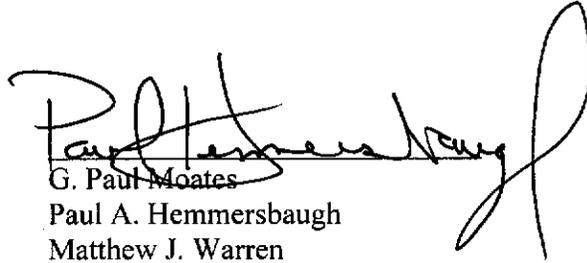
I hereby certify that on this 1st day of June, 2010, I caused copies of the Reply Comments of Norfolk Southern Railway Company and CSX Transportation, Inc. to be served by first-class mail or more expeditious means on all Parties of Record in STB Ex Parte 646 (Sub-No. 3).

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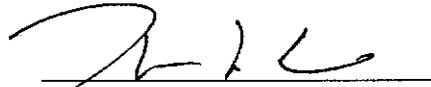
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