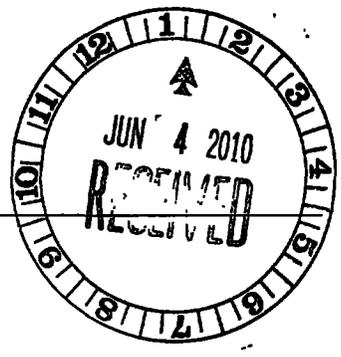


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**PUBLIC VERSION**  
**BEFORE THE**  
**SURFACE TRANSPORTATION BOARD**



**SEMINOLE ELECTRIC COOPERATIVE, INC.**

**Complainant,**

**v.**

**CSX TRANSPORTATION, INC.**

**Defendant.**

**Docket No. 42110**

**BRIEF OF CSX TRANSPORTATION, INC.**

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**Dated: June 4, 2010**

## TABLE OF CONTENTS

<b>SHORT FORMS FOR FREQUENTLY CITED CASES .....</b>	<b>v</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>I. CSXT DOES NOT POSSESS MARKET DOMINANCE OVER THE ISSUE MOVEMENTS.....</b>	<b>11</b>
A. SECI’s Attempt to Attack the Credibility Of CSXT’s Experts Only Damages Its Own Credibility.....	15
B. Water Transportation Is Feasible.....	18
C. Water Transportation is Cost-Effective .....	23
D. CSXT Is Not Market Dominant Over Movements Through Charleston.....	27
<b>II. THE BOARD SHOULD ADOPT CSXT’S OPERATING PLAN.....</b>	<b>31</b>
A. SECI Has Failed To Present A Feasible Operating Plan For The SFRR.....	33
1. The Methodology Upon Which SECI’s Operating Plan And Operating Expense Evidence Is Based Violates Fundamental SAC Principles.....	35
2. SECI’s Operating Plan Incorporates Critical Assumptions That Are Utterly Inconsistent With Real-World Railroading.....	38
3. SECI’s Operating Plan And RTC Simulation Do Not Take Account Of The Impact Of Local Operations On The SFRR’s Facility, Equipment And Personnel Requirements.....	43
4. SECI’s Operating Plan Fails To Provide Service Consistent With The Requirements Of “Non-Revenue” Traffic.....	47
5. SECI’s Evidence Is Replete With Errors That Render Its Operating Plan And Operating Expense Estimates Worthless.....	50
a. SECI Misclassified Road Trains As Yard Trains And Included Trains That Could Not Travel On The SARR.....	51
b. SECI’s Train Matching Methodology Resulted In An Operating Plan With Significant Gaps In Service.....	52
B. CSXT’s Operating Plan Provides For The Facilities And Personnel Required To Meet The Needs Of The SFRR’s Traffic And Should Be Adopted.....	58
C. SECI’s Criticisms Of CSXT’s Operating Plan Are Meritless.....	60

<b>III.</b>	<b>THE BOARD SHOULD ACCEPT CSXT’S TRAFFIC GROUP EVIDENCE.....</b>	<b>64</b>
A.	Complainant’s SAC Presentation is Fundamentally Defective Because it Relies Upon Impermissible and Unsupported Off-SARR Re-Routes. ....	64
B.	Correction of SFRR Traffic Volumes.....	75
1.	Coal Traffic.....	75
2.	Intermodal Traffic.....	82
3.	General Freight Traffic.....	84
C.	SFRR Revenues.....	88
1.	Coal Traffic Revenues.....	88
2.	Intermodal Traffic Revenues.....	89
3.	General Freight Traffic Revenues.....	90
4.	SECI’s Erroneous Calculation of Projected Fuel Prices on Rebuttal Results in an Overstatement of SFRR Fuel Surcharge Revenues. ....	91
5.	Revenue Divisions: Cross-Over Traffic.....	93
<b>IV.</b>	<b>THE BOARD SHOULD ADOPT CSXT’S OPERATING COST EVIDENCE. ....</b>	<b>95</b>
A.	SECI’s Operating Expense Estimates Are Riddled With Errors And Invalid Assumptions.....	95
1.	SECI Illogically Takes A “Merchandise Line-Haul Credit” For Empty Cars.....	95
2.	SECI Greatly Underestimated The Volume Of Switching Activity Required To Meet The Needs Of The Traffic Moving In SFRR Trains.....	98
3.	SECI Assumes That The SFRR Will Purchase Discontinued Road Locomotives.....	101
4.	SECI Refuses To Acknowledge CSXT’s Sworn Testimony Of Its Locomotive Lube Costs. ....	101
5.	SECI Rejected CSXT’s Actual Fuel Consumption And Cost Data In Favor Of Its Unsupported Assumptions. ....	102
6.	SECI Applies A Minimized Surrogate For Intermodal Lift and Ramp Costs. ....	104
B.	CSXT’s G&A Evidence Is Well-Supported and Should Be Accepted.....	104
1.	The Difference Between the Parties.....	104

2.	SECI’s Rebuttal G&A Evidence is Seriously Flawed. ....	108
a.	The Board Should Reject SECI’s Claims that Real-World Staffing Is Not Relevant to the SFRR’s Staffing.....	108
b.	SECI’s Staffing Assumptions Are Predicated on Fundamental Errors. ....	109
(i)	SECI assumes that the SFRR could pass off expenses to other railroads.....	109
(ii)	SECI ignores critical functions. ....	110
(iii)	SECI makes patently unreasonable assumptions. ....	111
(iv)	SECI resorts to blatant misrepresentations. ....	111
c.	SECI Fails to Include Necessary Executive Compensation. ....	112
d.	SECI’s Attrition Rate Should Be Rejected. ....	114
e.	CSXT’s Bad Debt Evidence Should Be Accepted. ....	116
C.	CSXT’s Maintenance of Way Evidence Should Be Accepted. ....	116
D.	CSXT’s Evidence on SFRR Insurance Costs Should Be Accepted. ....	121
E.	CSXT’s Estimate of SFRR Ad Valorem Tax Expense Should Be Accepted.....	123
<b>V.</b>	<b>CSXT’S ROAD PROPERTY INVESTMENT EVIDENCE SHOULD BE ACCEPTED.....</b>	<b>126</b>
A.	SECI Grossly Undervalues the SFRR’s Land Acquisition Cost. ....	126
1.	SECI Did Not Use ATF Methodology as Claimed, But Rather Assigned Values Based on Broad Geographic Averages, Resulting in Undervaluation of Land in Urban Areas. ....	128
2.	SECI Used the Wrong Valuation Date and Applied a Hidden Deduction to Appraisal Estimates. ....	131
3.	SECI Misstated CSXT Evidence on -Rebuttal in an Effort to Divert Attention From Its Own Failings. ....	132
B.	Roadbed Preparation.....	136
C.	SECI Did Not Adequately Account for the Capital Costs of Constructing Spurs, Industry Tracks, Turnouts, and Switches Necessary to Serve SFRR Customers. ....	137

D.	SECI’s Bridge Cost Calculations Fail to Take Into Account Essential Design and Engineering Elements, and Are Riddled With Errors.....	138
1.	SECI’s Uncorrected Conceptual and Design Mistakes .....	138
2.	SECI’s Implementation and Calculation Errors. ....	142
3.	Significant Flaws in SECI’s Evidence Concerning Bridges Over Navigable Waters. ....	143
E.	SECI’s Attempt to Change from Constructing a Line to the Paradise Power Plant to Claiming it Would Use Trackage Rights is a Prohibited Change of its Case-in-Chief on Rebuttal. ....	145
F.	SECI Fails to Include Necessary Costs for Ownership of the Monongahela Railroad, Over Which the SFRR Would Operate.....	146
G.	Positive Train Control.....	148
<b>VI.</b>	<b>CSXT CORRECTLY APPLIED THE BOARD’S DCF MODEL. ....</b>	<b>151</b>
A.	Equity Flotation Costs.....	151
B.	Inflation Indices for Land Values .....	152
C.	Locomotive Financing Costs .....	154
D.	Calculation of the SFRR’s Income Tax Liability .....	155
<b>VII.</b>	<b>THE BOARD SHOULD ACCEPT CSXT’S EVIDENCE ON REMAINING ISSUES.....</b>	<b>157</b>
A.	The Board Should Dismiss SECI’s Challenges to Paper Rates.....	157
B.	The Board Should Accept CSXT’s Proposed Operating Characteristics .....	159
C.	The Board Should Adhere to Its Regulations on Interest .....	160
<b>VIII.</b>	<b>CONCLUSION .....</b>	<b>160</b>

## SHORT FORMS FOR FREQUENTLY CITED CASES

The following short form case citations are used herein:

<i>AEPCO I</i>	<i>Arizona Electric Power Cooperative, Inc. v. Burlington Northern &amp; Santa Fe Railroad Co. &amp; Union Pacific Railroad Co.</i> , STB Docket No. 42058 (served Dec. 31, 2001)
<i>AEPCO II</i>	<i>Arizona Electric Power Cooperative, Inc. v. Burlington Northern &amp; Santa Fe Railroad Co. &amp; Union Pacific Railroad Co.</i> , STB Docket No. 42058, (served Mar. 15, 2005)
<i>AEP Texas</i>	<i>AEP Texas North Co. v. BNSF Railway Co.</i> , STB Docket No. 41191, (Sub-No. 1) (served Sept. 10, 2007)
<i>CP&amp;L</i>	<i>Carolina Power &amp; Light Co. v. Norfolk Southern Railway Co.</i> , 7 S.T.B. 235 (2003)
<i>Duke/CSXT</i>	<i>Duke Energy Corp. v. CSX Transportation, Inc.</i> , 7 S.T.B. 402 (2004)
<i>Duke/NS</i>	<i>Duke Energy Corp. v. Norfolk Southern Railway Co.</i> , 7 S.T.B. 89 (2003)
<i>Duke/NS Reconsideration</i>	<i>Duke Energy Corp. v. Norfolk Southern Railway Co.</i> , 7 S.T.B. 862 (2004)
<i>FMC</i>	<i>FMC Wyoming Corp. v. Union Pacific Railroad Co.</i> , 4 S.T.B. 699 (2000)
<i>Major Issues</i>	<i>Major Issues in Rail Rate Cases</i> , STB Ex Parte No. 657 (Sub-No. 1) (served Oct. 30, 2006), <i>aff'd sub nom. BNSF v. STB</i> , 526 F.3d 770 (D.C. Cir. 2008)
<i>McCarty Farms</i>	<i>McCarty Farms, Inc. v. Burlington Northern, Inc.</i> , 2 S.T.B. 460 (1997)
<i>Otter Tail</i>	<i>Otter Tail Power Co. v. BNSF Railway Co.</i> , STB Docket No. 42071 (served Jan. 27, 2006)
<i>SAC Procedures</i>	<i>Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases</i> , 5 S.T.B. 441 (2001)
<i>TMPA I</i>	<i>Texas Municipal Power Agency v. Burlington Northern &amp; Santa Fe Railway Co.</i> , 6 S.T.B. 573 (2003)
<i>TMPA II</i>	<i>Texas Municipal Power Agency v. Burlington Northern &amp; Santa Fe Railway Co.</i> , 7 S.T.B. 803 (2004)
<i>WFA I</i>	<i>Western Fuels Ass'n &amp; Basin Elec. Power Cooperative v. BNSF Railway Co.</i> , STB Docket No. 42088 (served Sept. 10, 2007)

*WFA II*

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

*Xcel*

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

## EXECUTIVE SUMMARY

Seminole Electric Cooperative, Inc. (“SECI” or “Seminole”) has proposed unprecedented modifications to the Board’s rules and procedures for stand-alone cost (“SAC”) cases. At every turn SECI proposes shortcuts, cost “surrogates,” “simplifying” assumptions, and other breaches of the Board’s rules. These tactics are necessary to posit a 2,100-mile SARR that has a traffic group of unprecedented complexity – including 555,107 carloads of merchandise traffic and 707,082 intermodal units – and yet that achieves fantastic operating efficiencies. Applying an array of nonsensical and unsubstantiated shortcuts, assumptions, and simplifications, SECI concludes that in its first year of operations the Seminole Florida Railroad (“SFRR”) would need only \$289 million of expenses to generate *\$1.04 billion* in revenues. That number sounds too good to be true – because it is. SECI’s “simplifying assumptions” include assumptions that:

- Its stand-alone railroad does not need to develop an operating plan or demonstrate its feasibility;
- The SFRR would move nearly 1.9 million loaded and empty merchandise cars without performing a single freight classification;
- The SFRR may rely on “surrogates” for the actual forward-looking costs derived from an operating plan designed to serve the SFRR’s selected traffic group; and
- CSXT would be required to tender to the SFRR, and pay for, over 1.3 million units of what it calls “non-revenue” traffic (*i.e.*, CSXT’s own traffic for which the SFRR would serve primarily as a bridge carrier) – even though over 60% of those cars are *empties* (including empties for the SFRR’s own traffic!), even though this unprecedented arrangement would result in significantly worse service for many of the movements SECI labels “non-revenue traffic,” and even though it defies credulity to believe that CSXT would enter into such a disadvantageous relationship with the SFRR.

These examples are just the tip of the iceberg. At almost every turn, SECI has adopted self-serving assumptions that are unreasonable and/or squarely at odds with SAC principles and with this Board’s precedents – often proclaiming them falsely to be consistent with Board decisions in prior SAC cases.

As this Brief and CSXT's evidence make clear, the flaws in SECI's evidence, including its simplistic and untenable assumptions and simplifications, are fundamental. They do not merely concern disputes between the parties concerning the appropriate level of assorted costs or revenues associated with certain components and details of a SAC analysis (though there are disputes about such matters as well). Rather, these disputes concern the fundamental nature of the Board's stand-alone cost test and methodology. These elemental issues include, for example:

- Whether a complainant is required to meet its burden of proof with respect to presenting and supporting a complete and sufficient SAC presentation, or if the Board will excuse fundamental failures of proof;
- Whether any party may satisfy its obligations and burdens concerning essential elements of a SAC case by merely assuming them away, *i.e.*, relying on unsupported assumptions, simplifications, and suppositions rather than specific and properly supported actual evidence;
- Whether, as the Board has consistently required since the adoption of *Coal Rate Guidelines* in 1985, a complainant must present a detailed operating plan tailored to the specific traffic group it selected for its SARR;
- Whether the complainant's failure to present an actual operating plan – an indispensable element of a SAC presentation – is such a pervasive failure of proof that a case must be dismissed for failure of proof;
- Whether a complainant will be allowed to assume it could somehow force the incumbent railroad to allow the SARR to carry large volumes of the incumbent's residual carload traffic when the incumbent would not agree to such an arrangement with a foreign carrier in the real world;
- Whether the Board's clearly articulated, established rules and requirements for various elements of a SAC case (*e.g.*, re-routed crossover traffic) mean what they say and will be enforced, or may be ignored by parties with impunity.

These and several other issues presented in this case are central to the application of the SAC test and its continuing validity and soundness. If accepted, the radical, fundamental changes in SAC cases advocated by SECI (both expressly and implicitly) would sever the process (both here and in future cases) from sound economics, and render the results incoherent and arbitrary.

There is a powerful reason motivating SECI's radical approach and tactics. A straightforward application of SAC principles – like that set forth in CSXT's Reply Evidence – shows that the SFRR's costs would far exceed its revenues. CSXT's evidence demonstrates conclusively that the costs to construct, operate and maintain a feasible SARR that could handle SECI's selected traffic far exceed the revenues that the SFRR would generate in every year of the 10-year discounted cash flow ("DCF") analysis – by a cumulative amount of approximately \$5 billion over that period. *See* CSXT Reply Ex. III-H-1.

It is not surprising that a proper SAC analysis proves by such a wide margin that CSXT's rates are reasonable. As demonstrated in CSXT's Reply Evidence and summarized below, the challenged rates are constrained by effective intermodal competition. CSXT faces real, feasible, and economically effective competition on transportation from each of the Complaint origins to SECI's Seminole Generating Station ("SGS") from rail-water and truck-water alternatives. The Board need not and should not reach the SAC evidence in this case, because SECI has failed to establish that CSXT has market dominance over the issue movements. Therefore, the Board should conclude that it does not have jurisdiction over the challenged rates. But if the Board does reach the parties' SAC evidence, a proper application of SAC principles demonstrates that the challenged rates are reasonable.

This Brief summarizes the important differences in the parties' evidence and the most critical issues that are presented for the Board's decision in this case. Because CSXT has focused on the most important issues, this Brief does not reiterate many points discussed in its Reply Evidence.<sup>1</sup> Even so, a thorough summary of the issues presented in this case requires substantial discussion, due both to the many disputed issues in this case and to SECI's decision to present far more extensive arguments and

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<sup>1</sup> CSXT incorporates and reaffirms all the arguments set forth in its Reply Evidence. Where CSXT does not further discuss an error or correction in this brief, CSXT's position remains the same as on Reply.

evidence on Rebuttal than it did on Opening.<sup>2</sup> To assist the Board's review of this case, CSXT presents this Executive Summary of the Brief.

Section I of this Brief discusses the compelling evidence that SECI has competitive alternatives to CSXT's rail service. CSXT's Reply Evidence presented expert testimony and analysis showing that SECI has viable competitive rail-water and truck-water alternatives to CSXT's all-rail service from each of the Complaint origins. Indeed, in many respects CSXT's experts' analysis accorded with that in a pre-litigation study of transportation alternatives commissioned by SECI itself. There is no question that SGS, located in Palatka, Florida on the navigable St. Johns River, is accessible to water-delivered coal. CSXT demonstrated that most Florida utilities and many businesses near SGS rely on barge service, and that SECI itself used barge-rail service to receive coal for many years. Indeed, one reason SECI selected the site of SGS was its location on the banks of a commercially navigable waterway. *See* CSXT Reply at II-18-19 & n.18. There is no reason SECI could not do what other Florida utilities do. Its ability to employ a water transportation option is an effective competitive alternative to CSXT's service that precludes a finding of market dominance.

SECI's belated attempts to argue that CSXT possesses market dominance over the subject movements are not convincing. After addressing market dominance in only the most cursory manner on Opening – when it was obligated to present its entire case-in-chief under the Board's rules – SECI realized how effectively CSXT had laid out the facts and adopted an “everything-but-the-kitchen-sink” approach to market dominance on Rebuttal. *Compare* SECI Opening at II-11-14 (3½ pages on water transportation); *with* SECI Reb. at II-18-76; Exs. II-B 1 & 2 (58 narrative pages and two consulting firms' testimony on water transportation). But even if the Board were to consider this untimely evidence (and it should not), SECI cannot avoid the reality that it has viable competitive alternatives to

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<sup>2</sup> SECI's Rebuttal Narrative is far more lengthy than its Opening. *Compare* SECI Opening (405 narrative pages) *with* SECI Rebuttal (605 narrative pages).

CSXT's rail service. As illustrated in this Brief, SECI's claims that water transportation to SGS is not feasible are rife with mischaracterizations – many of which are squarely contradicted by statements made by SECI or its experts before this litigation began. *See infra* at 18-22. Similarly, SECI's claims that water transportation would not be cost-effective are predicated on transparently incorrect distortions of the relevant costs. *See infra* at 23-27.

Section II addresses perhaps the most important question presented by the SAC evidence – the generation of an operating plan. This case differs from most SAC cases, in that the Board is not being asked to choose between two competing operating plans. Here, only CSXT has proffered a true operating plan – an actual train and car service plan designed to perform all of the operations necessary “to meet the transportation needs of the traffic the SARR proposes to serve.” *Xcel* at 23. SECI, by contrast, has failed to model any of the extensive local and switching operations necessary to serve the SFRR's general freight and intermodal customers. Instead, it proposes simply to “adopt” historical CSXT trains as “SFRR trains” (even though the majority of the cars on those historical trains are not in SECI's selected SFRR traffic group) and to use “surrogates” to estimate the costs of serving SFRR customers.

Put differently, rather than devise and demonstrate the feasibility of a plan for the SFRR's operations that would properly serve the SFRR's customers, SECI's consultants propose that the Board accept an “operating plan” that is nothing more than an arithmetical exercise based upon “surrogate” costs. SECI does not detail how (or where) the SFRR will perform intermediate switching, how it will accommodate pickups and setoffs at customer facilities, or how the SFRR's local and yard train operations would impact its overall network capacity, equipment requirements, and personnel needs. Section II demonstrates that SECI's gimmicks utterly fail to present a feasible operating plan for the SFRR. *See infra* at 33-57. The only feasible operating plan for the SFRR is CSXT's operating plan, and

the Board must accept it or dismiss the Complaint due to SECI's failure to carry its burden of proof on a central requirement of the SAC procedures. *See infra* at 58-63. Moreover, the Board should forcefully reject SECI's tactic of relying upon simplistic assumptions and arithmetic instead of developing an operating plan. SECI's unprecedented tactic dramatically departs from the Board's SAC principles, and the Board should make clear that Complainants that elect to include significant volumes of intermodal and merchandise traffic on their proffered SARRs must create "detailed operating plan[s]" that are "specifically tailored to serve [the SARR's] traffic group," including construction of the yards, sidetracks and other facilities needed to support trains handling this traffic. *Xcel* at 598.

Section III addresses issues relating to the traffic and revenues for the SARR. As it did in its operating plan, SECI's traffic evidence violated the Board's clear rules and requirements governing SAC cases and analysis. For example, SECI proposed widespread off-SARR reroutes of crossover traffic without even attempting to meet the Board's exacting evidentiary burden to justify those presumptively invalid reroutes. SECI's protests to the contrary in its narrative evidence are belied by its exhibits and workpapers, which clearly show that it proposed off-SARR reroutes between no fewer than 183 origin-destination pairs on Opening. *See infra* at 64-75. SECI also offered grossly inflated coal volume projections, which the Board should correct by using the most recent Energy Information Administration Annual Energy Outlook. *See infra* at 75-80.

Section IV addresses major disputes regarding operating expenses. SECI's evidence is replete with distortions. SECI's ludicrous assumptions (i) that the SFRR would be paid a "merchandise line haul credit" for moving hundreds of thousands of empty cars; and (ii) that a "surrogate" switching cost can substitute for an actual operating plan result in significant underestimates of operating expenses. Even if one assumes for the sake of discussion that SECI's methodological inventions are valid – and they plainly are not – SECI grossly overstated the "line haul credit" by including empty cars and

significantly understated its surrogate switching costs by undercounting the number of switches the SFRR would have to perform. *See infra* at 96-100. Indeed, SECI failed to count over 1.5 million switches. *See infra* at 100. Other examples of SECI's significant underestimates of operating expenses include the following:

- SECI proposes that the SFRR would have general and administrative (“G&A”) expenses three times lower than those of any comparable real-world railroad. It does this even though the SFRR’s complexity and traffic mix would require G&A staffing much more akin to real-world railroads than to the coal-only SARRs in most recent SAC cases. *See infra* at 105-09.
- SECI can only “support” this unreasonable G&A estimate with misrepresentations and ridiculous assumptions – such as that the SFRR’s customer service representatives would be ten times as efficient as those for a comparable real-world railroad. *See infra* at 111.
- SECI claims that SFRR executives would have compensation packages “comparable and competitive” to those of KCS executives, but it proposes to pay SFRR executives less than a third of what their counterparts at KCS are paid. SECI refuses to include either bonus payments to KCS executives or stock awards that – contrary to SECI’s representations – are accounted for as expenses by KCS. *See infra* at 112-14.
- SECI posits that the SFRR would have an absurdly low attrition rate of only 3% – a rate that would mean the average tenure of a SFRR employee would be 33 years. Its only support for that figure are extrapolations from outdated magazine articles. CSXT, on the other hand, based its attrition rate on a contemporary third-party benchmark. *See infra* at 114-15.
- SECI claims that the SFRR’s maintenance of way workforce would be *twice as efficient* on a track-mile basis as the MOW workforces accepted by the Board in recent cases. Its evidence is utterly devoid of any reason to believe that the SFRR’s workforce could be more efficient than those in *WFA*, *AEP Texas*, and *Otter Tail* – let alone twice as efficient. *See infra* at 116-21.
- As for insurance expense, SECI abandons its Opening position that the SFRR’s insurance expenses would be comparable to those of CSXT. But it replaces that unreasonable position with an even more ridiculous claim that the SFRR is “comparable” to major Canadian transcontinental railroads and that a one-time Canadian National accounting adjustment that resulted in negative insurance expenses should be used to artificially depress SFRR insurance costs. *See infra* at 121-23.
- SECI does not dispute (as it cannot), that nine of the jurisdictions the SFRR traverses apply the “unit method” to calculate ad valorem tax for railroads, and that a perfectly

efficient SARR would have a higher “unit value” – and higher ad valorem taxes in unit method states – than a real world railroad. But it does not provide any unit method calculation of its own, and instead only relies on a transparently flawed critique of CSXT’s unit method calculation. *See infra* at 123-25.

Section V of the Brief addresses the significant errors in SECI’s road property investment evidence that caused it to understate road property expenses by approximately \$4.75 Billion. SECI’s most significant error is a gross understatement of the cost of real estate the SFRR would need for its right-of-way. The SFRR would traverse some of the most expensive real estate in the country – including the Washington, DC metro area, Atlanta, Richmond, Nashville, Charleston, Savannah, and Jacksonville – and as a result it would need significant capital to acquire the real property required for its rail system in such areas. SECI resorts to a series of gimmicks to depress real estate prices, including the following:

- Valuing property as of January 1, 2009 – 2 ½ years after the date the SFRR would acquire land – in a transparent attempt to take advantage of a collapse in real estate prices that occurred long after the SFRR would have had to acquire the necessary property (*see infra* at 131-32);
- Applying an unsupported blanket 15-20% deduction to all its valuations (totaling \$132 million) – a deduction that SECI buried in a spreadsheet without any narrative or expert explanation (*see infra* at 132);
- Using overly large valuation units (with an average length of 7.5 miles) and failing to use the Board’s across-the-fence methodology to properly value properties along the right-of-way. *See infra* at 128-31.

SECI also massively underestimates roadbed preparation costs. It does so largely by asking the Board to reverse its settled precedent of using the real world costs of earthwork and excavation preparation from the R.S. Means Handbook and instead to use earthwork unit costs from a single 7,000 foot railroad line relocation project in rural Tennessee to estimate earthwork unit costs to the entire 2,100 mile SFRR system, without regard to terrain and other variables. CSXT’s evidence demonstrates that the special circumstances of the small, isolated siding relocation project SECI relies on make it an inapplicable measure of earthwork costs on the widely varied terrain of the SFRR. *See infra* at 136-37.

SECI furthermore failed to include sufficient track and facilities to serve the SFRR's customers. Its assumption that 83 industrial leads of only 33 feet each would suffice to serve the SFRR's 884 customer locations is patently unreasonable. *See infra* at 137-38. SECI's estimate of the SFRR's bridge costs is replete with errors, and it failed to account for the necessary costs of constructing the Monongahela Railroad lines over which the SFRR would operate. *See infra* at 138-48. Finally, SECI fails to include any costs for implementation of statutorily mandated Positive Train Control systems, based on speculation that Congress might change this statutory requirement before it becomes effective. *See infra* at 148-51.

Section VI addresses several critical flaws in SECI's application of the Board's discounted cash flow ("DCF") model. For example, SECI unreasonably assumes that the SFRR's real estate values will increase an average of 8.1 percent annually between 2006 and 2018 – an assumption flatly contradicted by testimony in this proceeding by SECI's own real estate witness. *See infra* at 152-54. And SECI distorts the DCF analysis by inappropriately accelerating interest tax deduction benefits and tax depreciation deduction benefits, thereby artificially reducing the DCF-generated starting revenue requirement for the SFRR. This approach is neither economically correct nor consistent with the Board's instructions in *Major Issues*. *See infra* at 155-56.

Section VII addresses several remaining issues, including the fact that SECI has inappropriately challenged three rates that it has no intention of using. Three of the eight origins named in the Complaint shipped no coal (or petcoke) to SECI during the two years preceding filing of the Complaint, and SECI's own verified evidence shows that it does not project any traffic moving from those origins to SGS at any point during the ten year DCF period. Accordingly, challenges to rates from those origins – Bailey Mine, Gibcoal and Charleston, SC– must be dismissed from the case. *See infra* at 157-59.

\* \* \*

CSXT's evidence demonstrates that there is effective competition for the issue movements, and the Complaint should be dismissed for lack of jurisdiction. But should the Board determine that it has jurisdiction, a proper application of the Board's rules to calculate the stand-alone costs and revenues of the SFRR conclusively demonstrates that the challenged rates are below a reasonable maximum and that SECI is entitled to no relief whatsoever.

## **I. CSXT DOES NOT POSSESS MARKET DOMINANCE OVER THE ISSUE MOVEMENTS.**

CSXT's Reply Evidence convincingly demonstrated that SECI has competitive alternatives to CSXT's rail service. The SGS plant is located on the St. Johns River, a major navigable waterway regularly used for commercial barge traffic by businesses near SGS. *See* CSXT Reply at II-26-29. CSXT presented expert testimony and analysis showing that rail-water and truck-water alternatives to CSXT's rail service would be viable from all the Complaint origins, and that these alternatives are economically competitive with CSXT's all-rail service. *See id.* at II-30-33; CSXT Reply Ex. II-B-1 ("Market Dominance Video")<sup>3</sup>; CSXT Reply Ex. II-B-2 at 2-15. Moreover, CSXT showed that SECI itself had commissioned – well before the filing of this case – a study of its water transportation options, and that analysis largely accords with that of CSXT's expert witnesses. *See* CSXT Reply at II-25; CSXT Reply Ex. II-B-2 at 15-22.

In most cases that have been brought under the SAC constraint, qualitative market dominance is uncontested.<sup>4</sup> When millions of tons of coal are shipped long distance from landlocked mines to landlocked power plants, there is usually little doubt that rail service is the only cost-effective transportation option. For this reason, qualitative market dominance generally has not been an issue in

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<sup>3</sup> CSXT Reply Ex. II-B-1 is a video sponsored by CSXT's expert witnesses Seth Schwartz and John Stamberg that illustrates the viability of the market dominance option described in CSXT's Evidence. SECI claims that the Board should not consider the video because, according to SECI, neither Mr. Schwartz nor Mr. Stamberg "in any way physically prepared" the video. SECI Reb. at II-18 n.22. That is not true – the video was based on their work and they were personally involved in scripting and developing the video exhibit. SECI goes on to suggest that statements of persons interviewed in the video cannot be considered in the absence of a verification from each of those persons. The Board has never applied such a formalistic rule, which would require litigants to obtain verifications every time they quoted a third party. Indeed, if SECI were right, a considerable portion of its own evidence would have to be excluded. *See, e.g.,* SECI Reb. Ex. II-B-1 at 19 (relying on statement of Thomas Craighead of Moran Towing); *id.* at 20 (relying on "direct communications with Port officials and shipping companies"); *id.* at 21 (relying on conversations with "Mr. Gene Creech of Wilmington Shipping Company" and "Captain John Redman" of McAllister Towing); *id.* at 25 (relying on alleged statement of sales manager for Gottwald Port Technology).

<sup>4</sup> *See, e.g.,* *WFA I* at 7; *AEP Texas North* at 6; *Otter Tail* at 5; *Xcel* at 597.

SAC cases addressing large-scale coal transportation in the western United States, where barge transportation is rarely a viable alternative. But the situation is quite different in the east, where abundant navigable waterways often create an effective alternative to rail service. This case is a prime example. Not only is the SGS Plant located on a major waterway, it is located in the midst of a industrial community that regularly uses water transportation to ship everything from fuel to bridge parts. *See* CSXT Reply at II-28-29. And the coal origins at issue in this case all have ready access to water transportation. *See id.* at II-30-32. Indeed, CSXT demonstrated (and SECI does not contest) that a number of Florida power plants rely almost entirely on barge transportation for their coal needs. *See id.* at II-34-37; Market Dominance Video at 19:06-19:35; *id.* at 21:43-22:15.

SECI does not dispute most of these facts. Instead, it claims that it is “irrelevant” that other Florida utilities rely on barge transportation, SECI Reb. at II-55, and “irrelevant” that SECI enjoys delivered coal costs that are far less than those of many other Florida utilities. *Id.* at I-6, II-30. And SECI claims that any discussion of its long history of using rail-barge transportation is ““sound and fury, signifying nothing.”” *Id.* at I-3 (quoting MACBETH). But SECI cannot erase the reality that other utilities use water delivery systems like that posited in CSXT’s evidence – or SECI’s own history of rail-barge service – any more than Lady Macbeth could wash “[o]ut [that] damned spot.” WILLIAM SHAKESPEARE, MACBETH, act 2, sc. 1. And the fact that other Florida utilities and businesses in SGS’s immediate vicinity all rely on barge transportation isn’t “irrelevant” – it is real-world proof that barge transportation is an effective competitive option.<sup>5</sup>

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<sup>5</sup> SECI complains that CSXT provided a “slanted account” of the parties’ commercial relationship and claims that any mention of the parties’ prior dealings “has no legitimate place” in this proceeding. *See* SECI Reb. at I-2-3. It then goes on to provide its own highly slanted account, rife with unsupported speculations about CSXT’s alleged motives and pricing policy. CSXT stands by its evidence which (unlike SECI’s) is supported by documentation, not speculation. *See* CSXT Reply at II-18-23 and workpapers cited therein. That evidence shows that SECI leveraged its intermodal barge-rail options to negotiate a highly favorable contract rate in 1998 that became even more favorable as the transportation

SECI's Opening Evidence did very little to satisfy SECI's burden of demonstrating that CSXT is market dominant. *See Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases*, 5 S.T.B. 441, 445 (2001) ("*SAC Procedures*") ("party with the burden of proof on a particular issue must present its entire case-in-chief in its opening evidence" (emphasis added)). SECI spent less than three-and-a-half pages of narrative discussing water alternatives to CSXT's rail service, which were supported by no exhibits or expert analysis. The handful of objections to water service SECI raised in this brief narrative were thoroughly addressed in CSXT's Reply Evidence at II-26-45.

Instead of presenting its market dominance evidence on Opening, SECI saved it for Rebuttal, when it knew that CSXT had no further opportunity for evidentiary filings. SECI devotes 58 pages of Rebuttal Narrative to qualitative market dominance and hired two separate consultants to produce 75 pages of reports addressing market dominance. In this voluminous new evidence SECI raises a host of brand-new objections and justifications to water service. For example, SECI now claims that there are operational problems with barging coal to the plant "which preclude its feasibility entirely." SECI Reb. at II-38. But these arguments are nowhere to be found in its Opening Evidence, which objected vaguely to alleged "high cost" and "permitting risk" – not to the operational feasibility of water transportation. SECI Open. at II-14. Other objections to water transportation that appear for the first time in SECI's Rebuttal include:

- Supposedly "dispositive" testimony from 2004 (SECI Reb. at II-35);
- Alleged waterborne coal handling losses (SECI Reb. at II-45);
- Alleged obstacles to obtaining property rights for construction of a dock and conveyor at SECI (SECI Reb. at II-40-55); and

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market changed over the ensuing decade. *See id.* at II-19-20. SECI's claims that the contract rate was a "market" rate at the time it brought its complaint is disproven by the fact that at the time of the complaint all but one of its contract rates were below the jurisdictional threshold and that SECI's delivered cost of coal was far below that of other Florida utilities. *See id.* at II-21-23

- The possible presence of manatees (SECI Reb. at II-40).

Even when SECI's Rebuttal Evidence on market dominance does relate to a point made in its Opening Evidence, SECI's Rebuttal often contains far more detailed evidence that could and should have been included in its Opening Evidence. For example, on Opening SECI discussed the need to obtain permits to construct a dock in the only the most vague and general terms. *See* SECI Open. at II-13. But on Rebuttal it spends over thirteen pages detailing supposed environmental obstacles to obtaining necessary permits for dock construction. *See* SECI Reb. at II-58-71.

SECI's decision to hold this evidence until Rebuttal is a blatant violation of the Board's rules:

[T]he party with the burden of proof on a particular issue must present its entire case-in-chief in its opening evidence. Rebuttal presentations are limited to responding to the reply presentation of the opposing party. Rebuttal may not be used as an opportunity to introduce new evidence that could and should have been submitted on opening to support the opening submissions. New evidence improperly presented on rebuttal will not be considered.

*SAC Procedures* at 445-46 (emphasis added). There is good reason to preclude SAC complainants from using rebuttal "to introduce new evidence that could and should have been submitted on opening." *Id.* Defendants have only one opportunity to present evidence in a SAC proceeding, and it would violate fundamental due process principles for the Board to base a decision on new evidence to which a defendant has not had a fair opportunity to respond. Here, CSXT's Reply Evidence responded to the objections to water transportation that SECI made in its Opening Evidence. While SECI may fairly present Rebuttal Evidence that addresses CSXT's criticisms of those objections, SECI is not entitled to raise brand-new objections in its Rebuttal Evidence or to cite evidence that it could and should have introduced on opening.

SECI's blatant violation of the Board's rules has severely hampered CSXT's ability to respond to SECI's evidence, and the Board should enforce its rules and disregard the new evidence. But even if the Board were to set SECI's violation aside, on the merits SECI's evidence is not sufficient to satisfy its

burden to demonstrate market dominance. First, SECI attempts to impugn the integrity and credibility of CSXT's market dominance experts by citing testimony of a deceased consultant in a different proceeding. But SECI has plainly taken that testimony out of context, and SECI's serial exaggerations and misrepresentations only damage its own credibility. Second, CSXT addresses SECI's newly-raised assertions of operational problems that make water transportation infeasible. These are not credible, particularly in light of SECI's long history of using water transportation and the pre-litigation BTG Report that never suggested that water transportation would be infeasible. Third, SECI claims that water transportation would not be cost-effective. But SECI accepts nearly every cost posited by CSXT's experts, and virtually all of the difference between the costs set forth in CSXT's Evidence and the costs calculated by SECI's experts derive from three areas. In each of these areas SECI's claims are not reasonable. Fourth, SECI certainly has not shown that CSXT is market dominant over shipments through the Port of Charleston. SECI's Rebuttal Evidence on Charleston boils down to the erroneous factual argument that CSXT has not shown that the Port of Jacksonville has sufficient facilities to receive coal and the erroneous legal argument that the Board cannot consider CSXT's market dominance over the Charleston movement separately from the other movements at issue.

**A. SECI's Attempt to Attack the Credibility Of CSXT's Experts Only Damages Its Own Credibility.**

SECI begins its qualitative market dominance with an attack on CSXT's experts, who SECI claims "previously represented to the Florida Public Service Commission ("FPSC") in sworn testimony . . . that SGS and SECI specifically did *not* enjoy rail/barge competition and were 'captive' to CSXT." SECI Reb. at II-19. That opening attack demonstrates the blatant misrepresentations that characterize SECI's market dominance rebuttal, for CSXT's experts did not "previously represent" anything to the FPSC. The testimony SECI cites is testimony of a different person, Dr. Robert Sansom, who is deceased and unfortunately unable to personally rebut SECI's attempt to distort his testimony for its

own ends.<sup>6</sup> Regardless, there is no inconsistency between Dr. Sansom's FPSC testimony and Mr. Schwartz's and Mr. Stamberg's analysis here.

In 2004, Dr. Sansom filed written testimony for CSXT in a proceeding before the FPSC regarding whether TECO acted prudently by choosing to transport coal via barge using an unregulated TECO affiliate. During his testimony about the prudence of TECO's decision not to explore competitive rail options, Dr. Sansom pointed out that TECO had higher transportation costs than SECI and described SGS as a plant that (like TECO at the time) did "not enjoy rail/barge competition." See SECI Reb. WP "Sansom Testimony.pdf" at 14; *see also id.* at 15. That passing observation is the sole basis of SECI's claim that there is an inconsistency between Dr. Sansom's testimony and that of Mr. Schwartz and Mr. Stamberg.

There is no inconsistency. SECI's ability to pursue water transportation options was not at issue in the FPSC proceeding, and Dr. Sansom performed no analysis of SECI's barge options. In context it is clear that Dr. Sansom was not opining on whether SECI had the potential to create economic rail/barge competition, just the fact that SECI was not exercising its ability to use rail/barge competition at that time. There is no proper basis for SECI to twist his passing comment into a suggestion that he expressed any opinion at all on whether SECI had the potential to transport coal to SGS by water.

Equally disingenuous is SECI's attempt to claim that Mr. Schwartz's and Mr. Stamberg's testimony should be discounted because EVA is "regularly retained by CSXT." See SECI Reb. at I-18. The truth is that EVA is a highly respected consulting firm that regularly advises both railroads and shippers—*including SECI*. The very FPSC testimony cited by SECI shows that Mr. Sansom testified for

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<sup>6</sup> SECI's claim that "[i]n preparing his testimony, Dr. Sansom was assisted by Mr. John Stamberg" is an astonishingly misleading characterization. SECI Reb. at II-33 n.47. The very page SECI cites makes clear that Mr. Stamberg had nothing to do with Mr. Sansom's comments about SECI and that Mr. Stamberg's only assistance to Mr. Sansom was an assessment of coal handling facilities at the TECO Big Bend station. See SECI Reb. WP "Sansom Testimony.pdf" at 38. CSXT's primary market dominance expert, Seth Schwartz, had no involvement whatsoever with the FPSC testimony at issue.

both railroads and utilities, and that he testified as an expert on behalf of SECI in 2000. *See Sansom Testimony* at 51.

Indeed, the true purpose of SECI's misguided effort to claim that CSXT's experts have testified inconsistently may be to obscure the dramatic reversal that its own paid consultants have taken. As demonstrated below, time after time the claims SECI and its consultants from BTG make in this litigation starkly differ from what BTG told SECI about its water transportation options in a confidential report prepared outside the context of this litigation. BTG's explanation for its reversal boils down to a claim that its earlier report was a mere "preliminary review." SECI Reb. Ex. II-B-1 at 39. The 2003 BTG Report itself – {

} *see* CSXT WP "SECI-004777" ("BTG Report") – disproves SECI's current efforts to disavow it as a "cursory" preliminary analysis. SECI Reb. at II-58. Curiously, SECI's evidence is devoid of any support for or explanation of its assertion that after reviewing the draft it "determined that the project was not feasible." SECI Reb. Ex. II-B-1 at 39. BTG says the decision is "addresse[d] in [SECI's] other evidence," *id.*; SECI claims that "[t]he explanation is provided by BTG itself." SECI Reb. at I-20 n.21. But a documented explanation of SECI's alleged decision that BTG's 2003 proposal was not feasible is nowhere to be found in SECI's evidence.

SECI's failed attack on the credibility of CSXT's experts is but one of the many misrepresentations and exaggerations that permeate its Rebuttal Evidence. For example, SECI continues to misrepresent that its ability to obtain transportation competition is limited by its coal supply contract. SECI first claimed that its contract with Alliance Coal obligates SECI to purchase at least 2.75 million tons annually from mines served exclusively by CSXT through 2016. *See* SECI Open. at II-10. CSXT's evidence showed {

} *See* CSXT Reply at

II-39.<sup>7</sup> On Rebuttal, {

}

**B. Water Transportation Is Feasible.**

Much of SECI's Rebuttal is devoted to the proposition that water transportation to SGS is not feasible. As discussed above, this newly-minted claim that water transportation is *impossible* (not merely uneconomical) should not be considered by the Board. The credibility of SECI's new arguments should also be considered in light of the fact that {

} SECI puts forward three theories to support its claim of non-feasibility – (1) that what it mischaracterizes as “open ocean” transfers are unworkable; (2) that

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<sup>7</sup> SECI asserts that this contract was not included in CSXT's workpapers, but it was. *See* CSXT Reply WP “SECI-001230.pdf.”

SGS could not obtain property rights to build a dock and conveyor; and (3) that SECI could not obtain environmental approval for the project.<sup>8</sup>

First, SECI's allegation that CSXT's experts proposed infeasible "open ocean" transloading misses the point. *See* SECI Reb. at II-39; SECI Reb. Ex. II-B-1 at 24. In the first place, the Jacksonville Anchorage Grounds are in the Intracoastal Waterway, which is an inland waterway, not the "open ocean." More importantly, even if SECI were right that midstream transfer would require "a protected fleeting area," JaxPort has in-harbor anchorages that could be developed to support midstreaming operations. { <sup>9</sup> And even assuming that SECI accurately stated the number of annual wave events that would prevent ship-to-barge transfer at the anchorage grounds, those events are not frequent enough to affect the viability of ship-to-barge transfer. According to BTG, wave events would have prevented ship-to-barge transfer on 65 days in 2008 and 47 days in 2009. *See* SECI Reb. Ex. II-B-1 at 35. But the operations CSXT has proposed do not require anything close to daily ship-to-barge transfers. Because each ocean vessel can carry 35,000 tons of coal, only 116 ocean vessel deliveries are necessary to transport 4,000,000 tons of coal. *See* CSXT Reply Ex. II-B-2 at 7, 19. There are thus 249 days a year where no ship-to-barge transfers would occur, giving SECI ample opportunity to avoid transloading on days where wave events are possible.

Second, SECI claims that it would be impossible for it to acquire the necessary land to build a dock and conveyor. In the first place, {

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<sup>8</sup> SECI's claim that the true measure of feasibility is whether an alternative is actually built is wrong. *See* SECI Reb. II-56 n.79. On the contrary, the Board held in *FMC* that the "threat of a potential conversion to truck provides an effective constraint on UP's rail rates." *Id.* at 712-14. The cases SECI cites have nothing to do with market dominance; rather, they are control cases addressing the very different question of whether a shipper would suffer competitive harm because a transaction would affect its ability to threaten a build-out.

<sup>9</sup> {

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} SECI now attempts to disavow BTG's analysis by saying it was only a "placeholder purchase price," but it presents no evidence to support that characterization and no reason to believe that such a substantial sum would be insufficient to purchase the necessary land (particularly in today's depressed real estate market). SECI Reb. at II-53.<sup>10</sup>

Third, SECI claims that there are insurmountable environmental obstacles to the project and lists a series of permits that it claims it would be unable to secure. As discussed previously, SECI could and

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<sup>10</sup> SECI devotes considerable attention to the question of whether SECI could acquire property by eminent domain. See SECI Reb. at II-53-55. That is irrelevant to the analysis here, because SECI has presented no evidence why it could not simply buy the property. Moreover, SECI has obviously misstated the law. It first cites a section of the statute defining the rights of rural cooperatives like SECI which provides that such cooperatives have the same eminent domain rights as "corporations constructing or operating electric transmission and distribution lines or systems." Fla. Stat. Ann. § 425.04(12). SECI's claim that this statute means that SECI can only exercise eminent domain to construct and operate electric transmission and distribution systems (and not, for example, to construct electric generation systems or fuel supply facilities) is a plainly unreasonable reading that SECI does not support with any authority beyond the claim that the statute must be "strictly construed." SECI's cramped interpretation is directly contradicted by the Florida Supreme Court's construction of the statute to allow utilities to exercise their eminent domain authority for projects related to "the furnishing of electricity to the public." *Demeter Land Co. v. Fla. Pub. Serv. Co.*, 128 So. 402, 407 (Fla. 1930); see *Seadade Indus., Inc. v. Fla. Power & Light*, 245 So. 2d 209, 213 (Fla. 1971) (electric utility properly used eminent domain to acquire land to construct water discharge canal). Furthermore, SECI's claim that it would be unable to show "reasonable necessity" for a taking through eminent domain because there is an alternate CSXT transportation option is disproven by the very cases it cites. See *Hillsborough Cty. v. Sapp*, 280 So. 2d 443, 445 (Fla. 1973) (reversing district court decision that existence of alternative route precluded eminent domain and holding that "[o]nce a condemning authority decides that a taking is necessary . . . the role of the court is limited to assuring that the condemnor acted in good faith, did not exceed its authority, and did not abuse its discretion"); *Rawls v. Leon Cty.*, 974 So.2d 543, 547 (Fla. Dist. Ct. 2008) (rejecting landowner claim that county should have considered alternate route as precluded by *Sapp*).

should have presented this evidence on Opening. *See supra* at 13-14. While SECI's sharp practices deprived CSXT of the opportunity to present a detailed response to this evidence, there is more than sufficient evidence in the record for the Board to reject SECI's claims on the merits.

In the first place, the critical evidence to consider is what SECI and its consultants said when SECI was not litigating this case. As CSXT described in its evidence, {

} *See CSXT Reply* at II-41-42.

{

} All SECI can say in response is that these analyses only considered the cost of environmental approval and did not research the likelihood of receiving the permits. *See SECI Reb.* at II-58. {

}<sup>11</sup> Moreover, SECI's

newfound concern about the potential for a dock to disturb "critical habitat for the Florida manatee" is starkly at odds with its pre-litigation statement that {

}<sup>12</sup> *Compare SECI Reb.* at II-40 *with BTG Report* at -4996.

And SECI has no response at all to the undisputable facts that nearby businesses have secured dredging permits and that SECI itself recently obtained approval to build a new coal-fired unit (against

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<sup>11</sup> {

}

<sup>12</sup> The photos of eel grass submitted by SECI appear to have been taken near the shoreline and not in the deeper water where both BTG and EVA proposed building a dock. *See SECI Reb. Ex. II-B-1* at 9.

considerable environmental opposition). *See* CSXT Reply at II-41 & n.59. Finally, SECI claims that SGS is located in an “essentially residential” area and therefore that environmental approval would be a nonstarter. But the truth is that SGS is located in what is at best a mixed-use area where recreational boat users share the river with commercial barges and where significant industrial operations are not at all uncommon or out of character for the area. CSXT’s video exhibit graphically demonstrates this fact. *See* Market Dominance Video at 4:50-5:05, 5:55-6:25, 6:50-7:12, 9:16-9:39, 11:53-12:25 (illustrating nearby industrial operations).

SECI also suggests that there is something inherently infeasible about what it calls an “eight (8) step” transportation chain from the Illinois Basin and a “five (5) step” chain from Northern Appalachia. SECI Reb. II-35; *see also id.* I-18. SECI never explains what math it used to come up with these numbers, which greatly exaggerate the complexity of the transportation alternative EVA posited. To be clear, the transport mode proposed by EVA requires just two transfers for coal from Northern Appalachia and just three transfers for coal from the Illinois Basin. There is nothing unusually complex about this arrangement – indeed, *SECI itself* formerly used a two-transfer option and CSXT described the three-transfer option used by Tampa Electric in its evidence. *See* CSXT Reply at II-34-35.<sup>13</sup> To illustrate:

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<sup>13</sup> The unsupported assertion by one of SECI’s experts that “[t]here are no major domestic coal movements in the United States that are routed using the complex and lengthy waterborne logistics routings proposed by EVA” (SECI Reb. Ex. II-B-2 at 33) is disproven by CSXT’s evidence that Tampa Electric ships coal from Colorado to its Polk plant in Florida by a longer and more complex waterborne routing than that proposed by EVA for SGS.

**Table 1  
Comparison of EVA Proposal With Prior SECI Route and Current TECO Route**

	<b>SECI pre-1998</b>	<b>TECO Polk Plant</b>	<b>EVA Proposed Water Transportation Alternative</b>	
<b>Origin</b>	Illinois Basin	Colorado	Illinois Basin	Northern Appalachia
<b>Loading</b>	Load rail at mine	Load rail at mine	Load rail at mine	Load rail at mine
<b>Transfer #1</b>	Rail-to-barge at Ohio River	Rail-to-barge at Ohio River	Rail-to-barge at Ohio River	Rail-to-vessel at Baltimore
<b>Transfer #2</b>	Barge-to-rail at Port St. Joe	Barge-to-vessel at New Orleans	Barge-to-vessel at New Orleans	Vessel-to-barge at Jacksonville
<b>Transfer #3</b>		Vessel-to-truck at Tampa	Vessel-to-barge at Jacksonville	
<b>Delivery</b>	Unload rail at plant	Unload truck at plant	Unload barge at plant	Unload barge at plant

**C. Water Transportation is Cost-Effective**

As for SECI’s criticisms of CSXT’s experts’ estimates of the cost of water transportation, the most important point for the Board to understand is that SECI accepts the vast majority of SECI’s cost estimates. This is not surprising, for CSXT’s experts made conservative assumptions throughout their analysis, and indeed often relied on elements from SECI’s historical use of water transportation and from the pre-litigation BTG analysis. Nearly all of the difference between CSXT’s estimated cost and the cost estimates put forward by SECI’s experts derives from three areas where SECI’s experts have made unreasonable assumptions that greatly inflate their estimates.

First, SECI miscalculates the cost of capital, which inflates its cost estimate by \$3.10 to \$5.90 per ton. *See infra* at 26, Table 2. Cost of capital is a significant element of the proposed project, which would require SECI to invest capital for ocean barges, river barges, midstream transfer and an unloading dock. CSXT’s experts conservatively used {

} SECI’s experts, in contrast, do not use SECI’s own cost of capital at all, but

instead use a surrogate cost of capital from the water transportation industry. *See* SECI Reb. Ex. II-B-2 at 19-21. This makes little sense, for under the proposed plan it would be *SECI* making the investments, not companies in the water transportation industry. SECI attempts to justify its assumption by claiming that the cost of capital it provided to BTG was “a wholly unrealistic and unreliable estimate.” SECI Reb. Ex. II-B-2 at 20.<sup>14</sup> Once again this is an instance when SECI’s assertions for purposes of this litigation starkly depart from what it said before this litigation. The cost of capital SECI estimated when it was seeking an objective assessment of the water transportation option – and not trying to gain a litigation advantage – is plainly the most reliable evidence.

Second, SECI again misrepresents the late Dr. Sansom’s testimony in an attempt to add “waterborne handling losses” amounting to { } per ton to the barge option. Significantly, neither of SECI’s experts themselves testify to these costs – instead, Mr. Heller simply applies Dr. Sansom’s estimates as to the costs of additional inventory and lengthy on-ground storage as a result of the particular barge movements at issue in the TECO proceeding. Because neither of those costs would be incurred in the water transportation option proposed by CSXT’s experts, Dr. Sansom’s estimate is completely inapplicable to this case.

Dr. Sansom testified that TECO’s decision to ship coal by water instead of rail would lead to two additional costs: (1) the cost of carrying excess coal inventory at its affiliated Electro-Coal Terminal (ECT) in New Orleans; and (2) moisture pickup from handling and storage at ECT. *See* SECI Reb. WP “Sansom Testimony.pdf” at Ex. 7. Neither of those costs is applicable here. CSXT’s experts do not propose ground storage in New Orleans (or anywhere else). Nearly all of the additional inventory costs

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<sup>14</sup> SECI’s attempts to undermine the basis of its own estimate are unpersuasive. In the first place, SECI previously submitted evidence in this proceeding estimating its cost of funds at only 4.0%. *See* SECI Pet. for Injunctive Relief, V.S. Geeraerts at 7 (filed Oct. 3, 2008). Moreover, whether the Rural Utilities Service will fund new coal-fired power plants has no conceivable bearing on SECI’s cost to finance construction of barges and a barge dock.

that Dr. Sansom calculated were due to storage at New Orleans. *Id.* (showing that 30 out of 37 days of additional transit time were due to storage at ECT). As for moisture addition, Dr. Sansom made clear that much of the moisture addition he testified about would have occurred during storage at ECT. *Id.* at 34. More importantly, under CSXT’s experts’ proposal, coal would not be exposed to the elements any more than it is today. CSXT proposed covered ocean barges. While river barges would be uncovered, that coal is no more likely to be rained upon than coal transported by rail in open-top hopper cars.

Third, SECI claims that CSXT understated the number of ocean vessels necessary for midstream transfer because it cannot be assumed that cranes would operate at 100% capacity. According to SECI, EVA’s supposed overestimate of crane transfer rates would require purchase of an additional ocean vessel. *See* SECI Reb. Ex. II-B-2 at 19. That criticism is based on a baffling misreading of CSXT’s evidence. CSXT’s design and cost was based upon two midstream transfer cranes designed for 1,500 tons per hour (“tph”) capacity. *See* CSXT Reply WP “Memo, Mid-Stream Coal Transfer Options” (including proposal for grab bucket unloader with rated capacity of 1,500 tph). BTG acknowledges that the cranes were rated at 1500 tph (*see* SECI Reb. Ex. II-B-1 at 27), and then inexplicably claims both that the cranes were rated at 1000 tph and that CSXT must have unreasonably assumed they would always operate at 100% capacity. *Id.* at 32. That’s not true – CSXT used a factor of 67% to assume that its two cranes rated at 1500 tph would operate at an average transfer rate of 1000 tph each. {

} This mistake by BTG  
overstates SECI’s transportation cost estimate by {            } per ton for Illinois Basin coal.

The reasons for the differences between SECI’s water transportation cost estimate and the estimate prepared by CSXT’s experts are summarized for Illinois Basin coal origins in Table 2 below (the cost differences for Northern Appalachian origins are smaller). The three factors discussed above

account for { } per ton of the difference, leaving just { } per ton to be explained by SECI's unsupported estimate for transfer at the Port of Jacksonville { }; its claim that barge market rates were rising when they were falling based on SECI's own data<sup>15</sup> { }; and a { } per ton difference for the rail-to-barge rate for only the lowest-cost mine origin.

**Table 2**  
**CSXT and SECI Estimated Costs for Delivery of Illinois Basin Coal to SGS<sup>16</sup>**

Segment	Difference in Estimates			Reason for Difference			
	CSXT	SECI	Difference	Cost of Capital	Transfer Rate	Waterborne Handling	All Other
<b>Mine to river</b>							
Pattiki mine	{ }	{ }	{ }	{ }	{ }	{ }	{ }
Other mines	{ }	{ }	{ }	{ }	{ }	{ }	{ }
<b>River barge to New Orleans</b>	{ }	{ }	{ }	{ }	{ }	{ }	{ }
<b>Port charge (New Orleans)</b>	{ }	{ }	{ }	{ }	{ }	{ }	{ }
<b>Ocean vessel charge</b>	{ }	{ }	{ }	{ }	{ }	{ }	{ }
<b>JaxPort Transfer</b>	{ }	{ }	{ }	{ }	{ }	{ }	{ }
<b>St. Johns River Barge</b>	{ }	{ }	{ }	{ }	{ }	{ }	{ }
<b>Unloading dock at SGS</b>	{ }	{ }	{ }	{ }	{ }	{ }	{ }
<b>Waterborne Handling</b>	{ }	{ }	{ }	{ }	{ }	{ }	{ }
<b>Total</b>	{ }	{ }	{ }	{ }	{ }	{ }	{ }

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SECI's evidence appears designed to create the impression that there are many questions about how a water transportation option would work and how much it would cost. But in the end there is only

<sup>15</sup> Compare SECI Reb. WP "EX7-RTN-2009.pdf" at 1 (showing December 2009 spot rate for barging coal from Mt. Vernon, IN to Davant, LA from \$11.50 to \$12.00) *with id.* at 24 (showing same spot rate in January 2009 at \$13.00 to \$15.00).

<sup>16</sup> Data in this table is derived from the table at page 6 of SECI Reb. Ex. II-B-2. Costs are in dollars per ton, assuming 4.05 million tons per year.

one question for the Board, and it has nothing to do with crane design capacity or local zoning laws or environmental regulations. The question is whether water transportation is a real and viable option. The Board does not need to decide precisely how a dock would be designed or what path a conveyor might take – it need only decide whether some configuration of water transportation could work. The fact that SECI used rail-barge transportation for many years, the fact that it chose the site of SGS in part because of its access to water transportation, the fact that many other utilities in Florida rely on water transportation supply chains like that proposed in CSXT’s evidence, and the fact that nearby businesses regularly use barge transportation all speak to the viability of the barge option. Nothing more is required for the Board to find that water transportation constitutes an effective competitive option and therefore that CSXT is not market dominant.

**D. CSXT Is Not Market Dominant Over Movements Through Charleston.**

Regardless of the Board’s ruling as to CSXT’s market dominance over the mine origins, there can be no question that CSXT is not market dominant over movements through Charleston. Charleston is not a mine, and coal shipments do not “originate” at the Port of Charleston. Rather, if coal or petcoke ever were transported by CSXT to SGS through the Port of Charleston,<sup>17</sup> Charleston would be nothing more than a waystation for a rail-water movement originating elsewhere. CSXT cannot possibly be market dominant over waterborne coal that could be routed to other ports – like Jacksonville – just as easily as it could be routed to Charleston. *Cf. Coal Trading Corp. v. Baltimore & Ohio R.R. Co.*, 6 I.C.C.2d 361, 375-76 (1990) (finding no market dominance where complainant did not have “sources captive to specific rail lines” and had ability to bypass defendant carrier by shifting to another port).

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<sup>17</sup> As discussed *infra* at 157-59 and at CSXT Reply I-8-12, no coal has ever been shipped from the Port of Charleston to SGS, and petcoke has not been shipped from the Port of Charleston since 2007. Moreover, SECI’s opening SAC evidence did not contemplate any shipments of coal or petcoke from the Port of Charleston to SGS during the ten-year SAC analysis period.

CSXT demonstrated that there is nothing to prevent waterborne coal or petcoke cargos from being routed directly to the nearby Port of Jacksonville for transportation by barge to the SGS Plant at Palatka. *See* CSXT Reply at II-46-47. CSXT further demonstrated that, even without building a dock, barges, or any transloading infrastructure, SECI could truck from the Port of Jacksonville rather than have coal or petcoke move via the Port of Charleston. *See* CSXT Ex. II-B-2 at 4 (EVA Report). Indeed, SECI already uses trucks to transport approximately 400,000 tons of limestone annually – more than the average annual volume of petcoke it received from Charleston in the past. *See* CSXT Reply at II-47-48. These truck movements demonstrate that trucking materials from the Port of Jacksonville is feasible and economical – and that SECI grossly exaggerated the costs of such movements in its Opening Evidence. *See id.* at II-47-49.

On Rebuttal SECI all but abandons its argument in Opening Evidence that trucking costs and regulations make it infeasible to truck coal and petcoke from the Port of Jacksonville.<sup>18</sup> Instead, SECI raises two new arguments. First, SECI states that at present there is not a facility with sufficient capacity and permits to accommodate SECI coal or petcoke arriving from ocean-going vessels. *See* SECI Reb. at II-73-74. But the relevant question is not whether there is an empty facility with all necessary permits standing ready to receive SECI’s coal – it is whether the necessary facility would become available if SECI chose to pursue its option to ship through the Port of Jacksonville. CSXT’s analysis assumed that the Martin Marietta facility at Dames Point could be used for these operations,

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<sup>18</sup> While SECI’s Rebuttal does not argue that trucking is infeasible, BTG does suggest that trucking from the Port of Jacksonville would require nine more trucks than posited in CSXT’s evidence. *See* SECI Reb. Ex. II-B-1 at 2-3. BTG is wrong. First, its claim that CSXT did not consider rush hour in calculating transit times is false – CSXT’s reply workpapers clearly demonstrate that its times were based on an average of morning, midday, and afternoon rush hour times. *See* CSXT Reply WP “Memo, CSX Seminole Trucking Route from Dames Point” at 1. Moreover, BTG’s claims that (1) trucks would only operate between 9:00 AM and 5:00 PM; (2) trucks would face rush hour traffic until 10:30 AM and beginning at 3:30 PM; and (3) that trucks would need to be washed *after every trip* are unreasonable on their face. But regardless of whether it takes 20 trucks or 29 trucks, trucking is plainly a feasible alternative.

both because { <sup>19</sup>} and because it already has the necessary infrastructure: facilities to unload vessels, load trucks, and provide ground storage. SECI quibbles that the Martin Marietta facility only has a permit to receive anthracite coal (and not steam coal or petcoke), but it does not advance a single reason to think there would be an obstacle to modifying the permit if SECI offered Martin Marietta the business opportunity. Nor is there reason to believe that SECI could not secure another location for coal unloading at the Port of Jacksonville in just the same way it secured a location at the Port of Charleston, such as the new Keystone Coal Terminal at the Talleyrand site which has, coincidentally, been designed by BTG to handle coal, petroleum coke and other bulk products.<sup>20</sup>

Second, SECI claims that the Board cannot consider Charleston separately because it has to aggregate SECI's movements from all origins for market dominance purposes. *See* SECI Reb. at II-75. That is a blatant misstatement of the law. *See E.I. du Pont de Nemours & Co. v. CSX Transp., Inc.*, STB Docket No. 42100, at 4-6 (June 27, 2008). In *DuPont* the Board found that CSXT was not market dominant for a chlorine movement from Natrium, WV to New Johnsonville, TN, but was market dominant for a chlorine movement from Niagara Falls, NY to New Johnsonville. Just as the Board considered modal competition for the Natrium-New Johnsonville movement separately from the Niagara Falls-New Johnsonville movement in *DuPont*, here it should consider Port of Charleston-SGS movements separately from movements from mine origins. SECI's claim that "the Board's precedents

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<sup>19</sup> *See* {

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<sup>20</sup> *See* <http://www.metrojacksonville.com/article/2010-jan-major-shipping-terminal-coming-to-urban-core>. BTG's claim that "there are no locations within the Port of Jacksonville area currently capable of unloading third party coal" is belied by both this real-world project and {

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establish that multiple origins for the same product are to be aggregated for purposes of measuring a railroad's market power" blatantly mischaracterizes the decisions it cites. SECI Reb. at II-75. In *McCarty Farms* the parties chose to aggregate origins in their market dominance evidence, and the ICC held that because the parties had presented their evidence in that manner, it too would aggregate origins in its analysis. *McCarty Farms v. Burlington Northern*, 3 I.C.C.2d 822, 826 (1987). And SECI's reference to *AEP Texas* makes no sense; the cited pages have nothing to do with market dominance or aggregation.

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At bottom, SECI's response to CSXT's evidence of a feasible competitive alternative to CSXT's rail service is predicated on assertions that it does not believe that barge transportation is feasible. But assertions that a transportation alternative is not viable cannot stand against documented evidence that it is. See *Increased Rates on Coal, Alabama to Boykin, FL*, 364 I.C.C. 263, 266 (1980). *Boykin* presented facts remarkably similar to those here: a challenge to a rail rate for coal transported from a mine with river access to a Florida coal plant located on the Apalachicola River. The complainant in *Boykin* claimed that barge transportation of coal was not economically feasible; in response, the defendants presented evidence that the Apalachicola River could accommodate barge traffic and that coal could be unloaded at the power plant or at a nearby dock. The ICC concluded that "[u]nsubstantiated allegations" that barge service would be unworkable could not rebut "persuasive evidence . . . that barge transportation can be used effectively as a partial or total replacement for rail service." *Id.* at 266-67.

Like the complainant in *Boykin*, SECI attempted to satisfy its burden of demonstrating market dominance with allegations that CSXT has shown to be unsubstantiated. And like the defendants in *Boykin*, CSXT has proven that barge transportation is a real and economically competitive option. Here, as in *Boykin*, "unsubstantiated allegations" of market dominance will not do. SECI cannot rebut

CSXT's evidence of effective intermodal competition for the rail transportation at issue. This case therefore must be dismissed for failure to demonstrate that CSXT possesses market dominance over the issue traffic.

## **II. THE BOARD SHOULD ADOPT CSXT'S OPERATING PLAN.**

The operating plans submitted by SECI and CSXT in this case present the Board with a stark contrast, and an important policy choice:

On the one hand, SECI attempts to reduce the development of a SARR operating plan to an arithmetic exercise. Rather than having its operating expert, witness Reistrup, design an operating plan tailored to the specific requirements of the SFRR's selected traffic group, SECI employed a methodology that culled historical train movements from a CSXT database produced in discovery and adopted those trains as "SFRR's trains" – even though the majority of the cars on those real world trains are not included in SECI's revenue traffic group. In purporting to model SFRR operations, SECI assumed – contrary to reality – that those trains move "intact" from the on-SARR junction at which they are received from the incumbent CSXT to the off-SARR junction where they are returned to CSXT, even though SECI acknowledges that its traffic group includes "a variety of commodities that move between hundreds of SFRR O/D pairs." SECI Open. at III-C-49-50 (emphasis added).

SECI likewise purports to reduce the SFRR's local operations to a series of calculations based upon historical data. Nowhere in its Opening or Rebuttal evidence does SECI present an actual train service plan that details the pickups, setoffs and intermediate switching activities required to handle the SFRR's traffic, nor does SECI incorporate those local operations into its RTC Model simulation. Instead, SECI witness Crowley proffers "surrogates" for the actual cost of local pickups and setoffs at customer facilities and switching cars between SFRR trains at intermediate points, based upon his (inaccurate) estimate of the volume of switching that the SFRR would need to perform and CSXT's historical URCS costs. Moreover, while the list of historical CSXT trains "adopted" by SECI includes

nearly 7,000 local and yard trains that perform critical elements of the service that CSXT provides to the SFRR's selected merchandise customers, SECI intentionally excluded all yard and local train movements from its RTC Model simulation (ignoring entirely the impact of local operations on the SFRR's overall transit time performance and equipment and facility requirements). In short, the "operating plan" and RTC Model simulation proffered by SECI bear little, if any, resemblance to the operations that the SFRR would actually be required to perform in order to meet the needs of its customers.

By contrast, CSXT presented a thorough and well-documented operating plan that accounts for all of the operations required to handle SFRR's traffic, the time necessary to perform those operations, and the cost of performing them. Using the very same data provided to SECI in discovery, CSXT identified the specific origin, destination, commodity and customer for every car (both SECI's "selected" traffic and so-called "non-revenue" cars) posited by SECI to move in SFRR trains. CSXT Reply at III-C-42-50. Based on that information regarding the SFRR's traffic, CSXT's operating experts developed a detailed train and car service plan and identified all of the necessary track and facilities to handle SFRR traffic in the least cost, most efficient manner. *Id.* at III-C-40-110. Unlike SECI's RTC Model simulation, CSXT's simulation evaluates the impact of both overhead road train movements and local operations (pickups, setoffs and intermediate switching) on overall system fluidity and transit time. *Id.* at III-C-24-35.

The Board should reject SECI's operating plan and operating expense evidence in its entirety, for many reasons. First, the methodology employed by SECI in developing its operating plan – which is based on historical CSXT trains that do not correspond to the traffic group selected by SECI and application of historical URCS costs to switching statistics "guesstimated" by SECI witness Crowley from historical CSXT data – violates the fundamental requirements of the SAC test. Second, SECI's

operating plan incorporates a variety of critical assumptions that are utterly unrealistic and inconsistent with real-world railroading. Third, by SECI's own admission (SECI Reb. at III-C-2), its operating plan and RTC simulation do not take account of the time that trains performing pickups, setoffs and switching at intermediate points would occupy the SFRR's tracks – or, more importantly, the impact of those local operations on the SFRR's facility, locomotive and crew requirements. Fourth, even assuming that SECI's methodology were conceptually valid – and it is not – SECI's operating evidence is replete with errors that render SECI's operating plan and expense calculations worthless.

**A. SECI Has Failed To Present A Feasible Operating Plan For The SFRR.**

SECI posits a SARR that is fundamentally different from those presented in any prior SAC case. Whereas the SARR traffic group in prior SAC proceedings has usually consisted almost entirely of unit train shipments of coal, SECI chose to include in the SFRR's selected traffic group 555,177 carloads of “general freight” (merchandise) traffic and 707,082 intermodal units. *See* SECI Reb. at III-C-30, Table III-C-1 (modifying SECI Open. Table III-C-1). In addition, SECI's operating plan assumes that approximately 1.3 million cars of so-called “non-revenue” merchandise and intermodal traffic would move in SFRR trains. CSXT Reply at III-C-1-2.

The methodology employed by SECI in preparing its operating plan for the SFRR also marks a radical departure from that presented by the parties (and approved by the Board) in prior SAC cases. Rather than developing the SFRR's operating plan in the manner prescribed by SAC procedures and precedent – *i.e.*, by having its operating expert, witness Reistrup, design train services, local and yard operations and facilities tailored to the specific needs of the SFRR's selected traffic group – SECI presented an “operating plan” consisting of a collection of historical CSXT train statistics and URCS costs.<sup>21</sup> SECI's cost witness, Mr. Crowley – who possesses no expertise with respect to railroad

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<sup>21</sup> SECI's workpapers show that witness Reistrup conducted little, if any, investigation of CSXT's actual general freight operations in connection with SECI's operating plan. Mr. Reistrup's notes indicate that

operations – purported to create a list of the CSXT trains in which the SFRR’s revenue traffic actually moved during 2008 by comparing the waybills for that traffic with CSXT’s 2008 train movement records.<sup>22</sup> SECI then simply “adopted” those historical CSXT trains as “SFRR trains” (see SECI Open. at III-C-21) – even though most of the cars that moved in those trains were not part of the SFRR’s selected traffic group.<sup>23</sup> SECI’s operating expert, witness Reistrup, did not identify the locations at which pickups, setoffs and switching activities would be required to handle the SFRR’s selected traffic group (much less “non-revenue” cars), nor did he account for the forward-looking costs of such operations on a location-specific basis. Instead, SECI witness Crowley generated supposed “surrogates” for the actual cost of providing local service by applying CSXT’s 2008 URCS system-average costs to a grossly understated guess at the number of switches performed by CSXT during 2008. SECI Open. at III-D-108-09. SECI presented similar “surrogate costs” for the SFRR’s intermodal operations, in lieu of a detailed intermodal service plan. *Id.* at III-D-109-10. SECI’s operating plan must be rejected, for several reasons.

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he spent a total of five days in the field – two days observing CSXT’s coal operations in West Virginia, two days in the Illinois Basin area of Indiana and Kentucky (again observing coal loading facilities and CSXT’s lines serving coal origins), and a single day at SECI’s Seminole Generating Station near Bostwick, FL. See SECI Open. WP “Seminole Electric v. CSXT Paul Reistrup Consolidated Field Trip Notes.” Mr. Reistrup’s notes make no reference whatsoever to CSXT’s general freight or intermodal traffic or operations.

<sup>22</sup> As discussed below (at 52-57), in performing that task, witness Crowley committed multiple errors that result in the failure of SECI’s “operating plan” to provide for all of the train services required to transport the SFRR’s traffic.

<sup>23</sup> Rather than excluding cars that were not part of SECI’s revenue traffic group from the SFRR’s trains, SECI assumed that the SFRR would transport such “non-revenue loads” across its lines (apparently for the account of the incumbent CSXT), and awarded the SFRR “merchandise line-haul credits” totaling more than \$100 million in the base year for doing so. As discussed below, this bizarre concept is neither permitted by SAC procedures nor justified by SECI’s bogus claim that the data produced by CSXT was inadequate to enable SECI to discern the movement characteristics of those cars.

**1. The Methodology Upon Which SECI's Operating Plan And Operating Expense Evidence Is Based Violates Fundamental SAC Principles.**

The operating plan proffered by SECI is based upon a methodology that violates fundamental SAC principles. The Board has stated on numerous occasions that:

[t]o make a SAC presentation, a shipper designs a SARR specifically tailored to serve an identified traffic group, using the optimum physical plant or rail system needed for that traffic. . . . Based on the traffic group to be served, the level of services to be provided, and the terrain to be traversed, a detailed operating plan must be developed. . . . Once an operating plan is developed that would accommodate the traffic group selected by the complainant, the system-wide investment requirements and operating expense requirements (including such expenses as locomotive and car leasing, personnel, material and supplies, and administrative and overhead costs) must be estimated.<sup>24</sup>

In this case, SECI did not present a “detailed operating plan” that is “specifically tailored to serve [the SFRR’s] traffic group.” To the contrary, SECI’s operating plan is built around a list of 2008 CSXT trains that contain massive volumes of traffic that SECI elected not to include in the SFRR’s traffic group. SECI’s evidence contains no information regarding the specific locations at which the SFRR would perform pickups or setoffs at customer facilities, or where the SFRR would switch cars between trains (much less the volume of such switching activity required at each location).<sup>25</sup> Indeed, SECI asserts that the SFRR would perform no freight classification whatsoever (SECI Open. at I-29), and its operating plan does not provide any switching yards at which cars could be physically transferred between SFRR trains. SECI’s RTC simulation likewise assumes (contrary to reality) that all SFRR road trains operate “intact” between on-SARR junctions and off-SARR interchange points, and that simulation takes no account whatsoever of the nearly 7,000 local and yard trains that SECI’s methodology posits as “SFRR trains.” SECI Open. at III-C-22-23.

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<sup>24</sup> *Xcel* at 598-599 (emphasis added); *see also CP&L* at 245 (same); *Duke/CSXT* at 413; *Duke/NS* at 98-99.

<sup>25</sup> By contrast, CSXT’s operating plan identifies, by location, the volume of switching activity that the SFRR would have to perform at each yard facility (*see CSXT Reply Table III-C-3*) as well as the 884 unique customer locations at which the SFRR would pick up or set off cars for its customers. *See CSXT Reply WP “On-SARR Customer Locations.xls.”*

In lieu of such a detailed operating plan, SECI offers only “surrogate” estimates of the costs of performing pickups, setoffs, and intermediate switching, derived from URCS and CSXT’s historical databases.<sup>26</sup> Specifically, SECI claims that it “accounts for” the cost of pickups, setoffs and local switching “by applying an I&I switching cost or a yard/local switching cost every time one of these activities could be-identified from the car event and CSXT shipment data produced by CSXT in discovery.” SECI Reb. at III-C-1-2; *see also* SECI Open. at III-D-108.<sup>27</sup> Likewise, rather than identifying the particular terminal operations required to handle the SFRR’s intermodal traffic and developing the forward-looking costs of conducting those operations, SECI simply hypothesized intermodal costs based upon an internal transfer pricing arrangement between CSXT and its affiliate, CSXI. SECI Open. at III-D-109. Such arithmetic exercises are not a permissible substitute for a “detailed operating plan” that spells out how (and where) the SARR would perform all of the operations necessary to serve its customers.

SECI’s reliance upon historical URCS costs and CSXT data in developing its “surrogate” for a full-blown operating plan also violates the well-established requirement that a Complainant’s operating expense estimates must be based upon the forward-looking costs of SARR operations. “[T]he SAC test ensures that the defendant carrier’s rates will be disallowed only if the revenues that the defendant is earning from the selected traffic group exceed the amount needed to cover all of the forward-looking costs that an efficient provider of rail service would face.” *AEPCO II* at 2 (emphasis added). The Board has explicitly rejected URCS-based costs as a benchmark for a SARR’s line-specific, forward-looking operating costs in SAC proceedings:

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<sup>26</sup> As CSXT demonstrates (at 98-100), SECI’s “surrogate” analysis grossly understates the volume of switching activity required serve the SFRR’s customers.

<sup>27</sup> SECI’s apparent confidence in the CSXT data for purposes of calculating its “surrogate” switching costs belies its repeated complaint that “severe limitations on the usability of [CSXT] traffic, car event and train movement data . . . made it impossible to actually model the complete operations of the general freight trains.” SECI Reb. at I-23 (emphasis added).

URCS reflects historical costs, not reproduction costs (which is the objective of the SAC test). Moreover, the URCS data are not specific to any line segment. A SAC analysis should be addressed to the lines to be replicated, not a carrier's entire system. (*AEPCO II* at 13.)

In *AEPCO*, the Board rejected the use of a trackage rights fee as a surrogate for the actual cost of constructing and operating a line segment because the complainant failed to demonstrate that the trackage rights charge reflected the full costs of ownership of the line. *Id.* at 11-13. SECI's historical cost-based analysis should likewise be rejected here.

In short, the unprecedented methodology employed by SECI in preparing its operating plan is utterly inconsistent with well-established SAC principles. Unlike the Board's procedures for small and medium sized rate disputes (which incorporate certain "simplifying" assumptions and processes in order to reduce the time and expense of litigating smaller rate disputes), the regulations and precedents that govern SAC cases do not authorize parties to employ "shortcuts" or to forego the detailed operating analyses required by the SAC test.<sup>28</sup> Compiling a list of historical trains containing massive amounts of traffic that have nothing to do with the Complainant's selected traffic group, modeling those trains as if they move "intact" across the SARR system without ever stopping to pick up or set off customers' cars or to switch cars between trains, and proffering "surrogate costs" based upon the incumbent's system-average URCS costs in lieu of an actual plan for providing local operations do not satisfy the Board's explicit requirement that a complainant present "a detailed operating plan" that is "specifically tailored to serve [the SARR's] identified traffic group." *Xcel* at 598-99. The methodology employed by SECI in this case provides no meaningful analysis of the specific operations required to serve the SARR's traffic group, and falls far short of a "detailed operating plan" for the SFRR. For that reason alone, the Board must reject SECI's ill-conceived operating plan (and related operating expense evidence) in its entirety.

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<sup>28</sup> SECI's evidentiary filings posit a variety of new "SAC principles" to justify the shortcuts that it took. However, it is the Board, not SECI's lawyers and consultants, that establishes the rules applicable to the SAC analysis.

Moreover, because the selection of merchandise and/or intermodal traffic as part of a SARR's traffic group may recur in future cases, the Board should make clear that it will not accept similar compilations of statistics based upon the incumbent carrier's historical databases and URCS costs in lieu of the detailed analysis of the SARR's operations required by the Board's regulations and prior SAC decisions.<sup>29</sup>

**2. SECI's Operating Plan Incorporates Critical Assumptions That Are Utterly Inconsistent With Real-World Railroading.**

The Board has made clear that "the assumptions used in the SAC analysis, including the operating plan, must be realistic, *i.e.*, consistent with the underlying realities of real-world railroading." *WFA I* at 15. SECI's operating plan, and the RTC Model simulation performed by SECI to support it, incorporate a variety of critical assumptions that contravene this fundamental requirement.

A critical failure of SECI's operating plan is its assumption that the SFRR would not need to perform any classification of merchandise cars. *SECI Open.* at I-29. This assumption serves as the predicate for SECI's decision not to construct general freight classification facilities anywhere on the SFRR's 2,092-mile system. *See SECI Open. Ex. III-B-3.* On rebuttal, SECI added a limited number of yard track facilities to handle intermodal and "Transflo" traffic. *SECI Reb.* at III-C-11. However, SECI adhered to its position that general freight classification yards are unnecessary, asserting that CSXT's proposed operating plan "burden[s] the SFRR with 13 unnecessary yards . . . . to perform totally unneeded, hypothetical blocking and switching functions." *Id.* at III-C-6 n.4.

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<sup>29</sup> SECI witness Crowley's flawed manipulation of historical train data to produce an "operating plan" for the SFRR is reminiscent of his "proprietary string diagram model" for demonstrating the feasibility of a Complainant's operating plan and SARR configuration. Notwithstanding repeated rejection of evidence based upon Mr. Crowley's string diagram model in SAC cases, Complainants continued to rely upon it until the Board made clear in *Xcel* that the string diagram model is not a reliable analytical tool. *See, e.g., Xcel* at 611-613. The Board should likewise put to rest the ill-conceived methodology relied upon by SECI in preparing its operating evidence in this case.

SECI's assumption flies in the face of both real-world railroad experience and common sense. SECI posits that nearly 1.9 million loaded and empty general freight cars (including both the SFRR's selected traffic group and "non-revenue" cars) would move in SFRR trains. The SFRR would be required to pick up and/or deliver merchandise cars at 884 unique customer locations along its system. CSXT Reply at III-C-42.<sup>30</sup> SECI's operating plan also contemplates that the SFRR would receive merchandise cars from, and forward those cars to, other carriers (including CSXT) at 58 different interchange points. It is simply inconceivable that the SFRR could handle such a massive volume of general freight traffic across a 2,100-mile rail system without any classification/switching plan (or the facilities to execute it). SECI's contrary assumption is simply not "consistent with the underlying realities of real-world railroading." *WFA I* at 15.

SECI's related assumption that the SFRR would not need any freight classification yards to accommodate merchandise traffic (SECI Open. at I-29; Ex. III-B-3) is not only utterly unrealistic, it is patently inconsistent with SECI's own evidence. SECI states that:

**In crafting the SFRR's operating plan to handle merchandise traffic, SECI recognized that not all cars on the train move to the same point, that pickups and setoffs of cars occur at intermediate points, and that local and yard switching must be provided to get cars to their local destination points (or from their local origin points.)**

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<sup>30</sup> On Rebuttal, SECI asserts that the SFRR would, in fact, be required to serve only 83 customer facilities. SECI Reb. at III-B-25. This assertion is incorrect. Using the same commodity-specific origin/destination pairs that were utilized by SECI to forecast its selected revenue merchandise traffic, CSXT identified 884 unique customer locations. See CSXT Reply III-C-42; CSXT Reply WP "On-SARR Customer Locations.xls." SECI seems to imply that only one customer can be located at a particular station, yet even that assumption would not explain how SECI calculated its claimed 83 customer locations. Indeed, SECI's position on Rebuttal is flatly inconsistent with the statement in its Opening Evidence that the SFRR's merchandise traffic would move to and from "hundreds of SFRR O/D pairs." SECI Open. at III-C-49-50. Moreover, SECI's own workpapers indicate that, upon reviewing CSXT's analysis of customer locations, SECI's experts "developed a restated number of 553 customer connections." SECI Reb. WP "SFRR Industry and Spur Tracks."

SECI Reb. at III-C-7 (emphasis added). In addition, the list of historical CSXT trains adopted by SECI as “SFRR trains” includes 2,282 “yard trains.” See SECI Reb. WP “SFRR Base Year Service Units Rebuttal.” According to SECI’s workpapers, those SFRR yard trains would operate at points including Jacksonville, FL; Cartersville, GA; Charleston, SC; and Hopewell, VA. *Id.* Likewise, the list of SFRR trains adopted by SECI from CSXT’s train records includes 4,690 “local trains” that operate between numerous intermediate points on the SFRR system. *Id.* Yet, the SFRR (as configured by SECI) would not have switching or classification yards at any of those locations – indeed, SECI chastises CSXT for including such “unnecessary” facilities in CSXT’s SARR configuration. SECI Reb. at III-C-6 n.4. SECI does not explain how the SFRR could operate thousands of “yard trains” or perform “local and yard switching” (*id.* at III-C-7) without constructing the yards to support those functions.<sup>31</sup> In essence, SECI’s operating plan assumes that nearly 7,000 SFRR local and yard trains would magically spring into existence without first being assembled by an SFRR switch engine and crew at an intermediate yard facility. Such a fantastic assumption does not comport with real world railroading or common sense.

SECI’s RTC Model simulation also incorporates several assumptions that are inconsistent with real-world railroading:

SECI’s conscious decision not to include the SFRR’s local trains and yard trains in its RTC simulation assumes that SFRR road trains would never experience delays caused by local and yard trains occupying the SFRR’s main lines. That assumption is patently inconsistent with the reality of day-to-day railroading. Conflicts between through trains and local assignments are a daily occurrence in merchandise railroading. Real-world railroads address such conflicts by, among other things, utilizing tools like the RTC Model to assist them in designing operating plans and schedules that minimize

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<sup>31</sup> Any suggestion that the I&I switch cost estimate calculated by witness Crowley is sufficient to account for the cost of constructing necessary yard facilities is both nonsensical and inconsistent with SECI’s assertion that such facilities are not needed by the SFRR.

interference with higher-priority train movements over busy corridors. Of course, a simulation that does not consider all trains scheduled to use the subject line is essentially worthless.

SECI complains that “severe limitations on the usability of [CSXT’s historical] traffic, car event and train movement data . . . made it impossible to actually model the complete operations of the general freight trains.” SECI Reb. at I-23. This is nonsense. While the data provided by CSXT in discovery may not have been organized in a manner that facilitated SECI’s preferred methodology – *i.e.*, simply compiling data points from historical records rather than designing an actual plan for the SFRR’s local operations – it was more than sufficient to enable SECI to identify the specific origin, destination, commodity and customer associated with every car (both “selected” revenue traffic and so-called “non-revenue” cars) that SECI assumed would move in SFRR’s trains. Indeed, using the very same data, CSXT’s operating experts prepared a detailed plan for the SFRR’s local operations. *See* CSXT Reply at III-C-40-110. CSXT’s RTC Model simulates all of the operations that SFRR trains would perform, including pickups and setoffs at customer facilities, and the transfer of cars between trains at intermediate yards. By employing the data furnished by CSXT, and the experience of its putative operating expert, SECI could have done the same.

A related assumption reflected in SECI’s RTC simulation is that all road SFRR trains would operate “intact” from the on-SARR junction at which they entered the SFRR’s lines to the off-SARR point at which they would be interchanged back to CSXT. As SECI explained, “the SFRR is assumed to operate only complete trains intact from origin to destination.” SECI Open. at III-D-107 (emphasis added); *see also id.* at III-C-23 (“SECI’s experts did not attempt to model local trains or to replicate the operation of other trains with intermediate pick-ups and set-outs in the RTC simulation.”) (emphasis added). This assumption is wildly unrealistic – particularly in light of the fact that the SFRR would rely upon road trains to pick up and set off cars at customer facilities. *Id.* at III-C-8 n.5 (“To the extent that

such a [road] train drops off or picks up cars at an intermediate point that is a local SFRR destination or origin, the SFRR crew performs this work as well.”) SECI’s plaintive explanation that it was “impossible” for it to model the SFRR’s trains as they actually would operate is unavailing – any difficulty that SECI encountered was a direct result of the ill-conceived “data phishing” methodology it elected to employ, not the quality of CSXT’s data.

Finally, both SECI’s operating plan and its RTC Model simulation assume that the same SFRR trains would enter and/or exit the SFRR system at different locations on different days, often at points that are hundreds of miles apart. For example, during the 10-day peak period modeled by SECI the daily CSXT “Q410” trains adopted by SECI entered the SFRR at four different locations and exited the SFRR’s lines at three different junctions. CSXT Reply at III-C-27. The on-SARR junctions at which SECI assumed these trains might enter the SFRR on any given day are 276 miles apart, while the potential off-SARR junctions included both Alexandria Jct., MD and Savannah, GA (which are 570 miles apart).

As CSXT demonstrated (*id.* at III-C-27-29), no real-world railroad would employ such a practice, nor would carriers connecting with the SFRR tolerate such chaotic interchange arrangements. SECI’s assumption would create tremendous inefficiencies, and impose substantial additional costs on both the SFRR and CSXT (thereby violating the prohibition against operating practices that create additional costs for the incumbent carrier).<sup>32</sup> Moreover, inconsistency in the routing of cars implied by SECI’s assumption would clearly alter (and impair) the level of service provided to shippers of merchandise cars that the SFRR has selected. Indeed, SECI’s proposal is the antithesis of the

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<sup>32</sup> *Duke/CSXT* at 443 (“[W]hile the proponent of a SARR can determine (within reason) how the SARR would operate, it cannot assume that a connecting carrier . . . would alter its existing operations for the benefit of the SARR”); *Xcel* at 612 (Complainant’s operating plan inappropriately shifted cost of providing facilities to stage trains to mine operators).

“scheduled railroad” operations that real world railroads have implemented in order to meet the expectations of their merchandise customers.

The nonsensical assumptions that permeate SECI’s “operating plan” and RTC Model simulation render SECI’s operating plan infeasible, and its RTC simulation (and the operating statistics generated by that simulation) worthless.

**3. SECI’s Operating Plan And RTC Simulation Do Not Take Account Of The Impact Of Local Operations On The SFRR’s Facility, Equipment And Personnel Requirements.**

SECI’s operating plan and RTC Model simulation ignore the impact of the SFRR’s local operations on its facility, equipment and personnel requirements. SECI takes the position that the “surrogate” costs that it developed for the SFRR’s local operations “account for the costs associated with all operations conducted by the general freight trains in the SFRR traffic group.” SECI Reb. at I-23; *see also id.* at III-C-51 (“If CSXT is referring here to delivery and pickup of cars by local or yard trains, SECI accounted for these activities through its yard and local switching cost additive. This cost additive reflects the time and personnel needed for local pickups and setouts.”)<sup>33</sup>

SECI is wrong. The switch costs relied upon by SECI reflect only the system-average costs incurred by CSXT in performing the physical act of picking up and delivering cars at customer facilities, or switching cars between trains. However, SECI’s “surrogate” switch costs do not account for the

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<sup>33</sup> SECI’s assertion that it was “inappropriate” for it to include the time required to perform local pickups, setoffs and switching activity in its RTC Model simulation “because there is no way to identify dwell times at or between locations from CSXT’s car event or train movement data” (SECI Reb. at III-C-51) is specious. SECI cannot be excused from complying with the Board’s requirement that a Complainant’s operating plan detail all of the operations needed to serve the SARR’s traffic simply because CSXT’s data were not organized in a manner that would have made it easier for SECI to use in connection with its arithmetic operating plan methodology. As discussed above (at 32), the data provided by CSXT were more than sufficient to enable SECI to identify (as CSXT did) the specific origin, destination, customer and commodity for every car moving in an SFRR train. With that information, SECI’s operating expert could have designed a local train service plan for the SFRR and incorporated those local operations into SECI’s RTC simulation. Indeed, on Rebuttal, SECI grudgingly acknowledges that it would have been possible for it to do so. SECI Reb. Ex. I-1 at 26.

impact that local trains occupying the main line have on a railroad's overall network capacity and fluidity. Those impacts can be discerned only by inputting local switching activities into a simulation based on the RTC Model (or a similar analytical tool). SECI intentionally excluded the SFRR's local train operations from its RTC simulation (SECI Open. at III-C-22-23), and the impacts of those operations are not accounted for anywhere in SECI's evidence. Indeed, SECI admits that "[t]he only thing SECI did not do is include the *time* for these activities in its RTC Model simulation." SECI Reb. at III-C-2 (emphasis added). By contrast, CSXT's operating plan and RTC simulation take account of all of the SFRR's train operations and the impact of pickups, setoffs and local switching on the SFRR's overall physical capacity, equipment requirements and personnel needs.

CSXT presented two Reply Exhibits that graphically illustrate the failure of SECI's RTC model to consider the impact of SFRR local train operations, and the impact of that deficiency on the validity of SECI's RTC simulation outputs. CSXT Reply Exhibit III-B-5 is a video excerpt from SECI's Opening RTC Model simulation, which traces the movement of an SFRR train (Train FNorNas6) between North Gibson, IN and Nashville, TN. As the excerpt shows, this train, as modeled by SECI, proceeds from North Gibson to Nashville without ever stopping en route – even though it is carrying cars destined to (or is supposed to pick up cars at) five intermediate points – Henderson, KY; Madisonville, KY; Hopkinsville, KY; Guthrie, KY; and Courtland, KY. *See* CSXT Reply Ex. III-B-5; CSXT Reply at III-B-31-32. By contrast, as CSXT Reply Exhibit III-B-4 shows, the RTC Model simulation performed by CSXT witness Wheeler incorporates each of the five stops that the train would be required to make in serving the SFRR's customers, and fully accounts for the impact of such local operations on both Train FNorNas6's transit time and overall SFRR network fluidity. *See* CSXT Reply Ex. III-B-4; CSXT Reply at III-B-29-31. As this evidence graphically demonstrates, the pickups, setoffs and switches that the SFRR would be required to perform at intermediate points clearly impact both the

transit time of individual trains and the SFRR's overall line capacity and fluidity, thereby requiring the SFRR to deploy more locomotives, cars and crews than SECI included in its operating plan.

SECI's operating plan and RTC Model simulation simply ignore this critical time element of the SFRR's operations, postulating SFRR trains that move at full speed along the SFRR's main lines without stopping to drop off or pick up cars at local industries, or taking the time to transfer cars between trains at intermediate points. Instead of designing a plan that accounts for those tasks (as CSXT did), SECI proffers a "surrogate" for the actual cost of performing the SFRR's switching operations based upon witness Crowley's (vastly understated) estimate of the number of switches to be performed by the SFRR and CSXT's URCS system-average I&I switch cost. This "book entry" approach falls far short of satisfying SECI's burden of presenting a feasible operating plan and renders SECI's estimated train transit times, car and locomotive fleet requirements, and personnel requirements unreliable.

On Rebuttal, SECI purported to "test the validity of the switching cost surrogates used on Opening" by comparing the costs supposedly incurred by a relative handful of "sample [train] movements" in performing intermediate switching with the surrogate costs generated by witness Crowley. SECI Reb. at III-C-11. Specifically, SECI selected 47 trains from the 1,090 trains included in SECI's Opening RTC peak week simulation and input into its RTC Model information regarding intermediate switching activity performed by those "sample" trains. According to SECI, "the results of the RTC switch-train simulation demonstrate that the switch cost additives applied by SECI in its Opening evidence were reasonable." *Id.* at III-C-18-19.

SECI's "RTC switch-train simulation" proves nothing. Because SECI intentionally chose not to include any SFRR local trains or yard trains in its RTC Model, it was not possible for SECI to use its RTC simulation to evaluate in any meaningful manner the cost of local switching activities (much less

the impact of such operations on the SFRR system as a whole).<sup>34</sup> The 47 trains selected by SECI for inclusion in SECI's so-called "sample" are all road trains that perform little, if any, switching. Indeed, 22 of the 47 road trains selected by SECI for its "study" performed no switching whatsoever, while the remaining 25 trains were involved in a collective total of only 29 switch events.<sup>35</sup> A "study" in which local and yard trains (which perform the vast majority of switching on any railroad) are ignored, nearly half of the trains actually studied perform no switching at all, and the remaining trains generate only 29 observed switching events (on a SARR that, by SECI's own understated estimate, would perform approximately 419,000 switches annually), is not credible proof of the SARR's average switching cost. Moreover, unless all of the switching activities required to serve the SARR's customers are included in an RTC simulation (as they were in CSXT's RTC Model, but not SECI's), an RTC simulation cannot properly measure the effects of local operations on the SARR's overall transit times, fluidity and line capacity.

The Board has held that, in order to be valid, an RTC simulation must be modeled with all real-world inputs that can impact a SARR's operations. *Otter Tail* at C-21. In *Otter Tail*, the Board rejected BNSF's RTC simulation and operating plan because BNSF took the position that increased dwell times were necessary for feasible operations but "failed to model the [SARR] and show the impact of increasing the [] dwell times on the total transit times." *Id.* The Board reasoned that, because the SARR

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<sup>34</sup> SECI apparently considered including in its study certain historical CSXT local trains that operated in the vicinity of Charleston, SC. However, citing supposed "continuing problems" with CSXT's train movement data which (according to SECI) indicated "no identifiable switching activity" by those local trains, SECI excluded them from its study. SECI Reb. at III-C-16-17. This is but another example of SECI's failure to utilize properly the data that CSXT provided to it. Information regarding the local switching activities performed by the subject Charleston-area trains – which operate in turnaround service from CSXT's yard at Charleston – may be found in CSXT's car event data file, not in the train event file upon which SECI incorrectly relied.

<sup>35</sup> SECI Reb. WP "Sample\_CSXT\_Data\_Amqui-Smyrna\_(11 trains).xlsx"; "Sample\_CSXT\_Data\_Atlanta-Nashville\_(26 trains).xlsx"; "Sample\_CSXT\_Data\_Selkirk-Waycross\_(10 trains)\_v2.xlsx."

is a network, the proponent of an operating plan cannot account for necessary dwell times “without tracing the effect through the entire network.” *Id.* The Board made clear that it would not accept mere assertions of what the effects of required activities would be because:

changing dwell times in yards would change the interaction between trains all along the network, sometimes in unexpected ways. For example, holding a train at a location longer can improve the downstream fluidity of the rail network and improve overall transit times.

*Id.* Consequently, the Board chose the Complainant’s fully modeled operating plan as the best evidence of record on the grounds that BNSF’s simulation (which did not incorporate its dwell time assumptions) failed to provide evidence of the impact of BNSF’s proposed dwell times and yard sizes on the operating plan. *Id.* at 19. For the same reasons, the Board should likewise reject SECI’s RTC simulation and operating plan in this case.

**4. SECI’s Operating Plan Fails To Provide Service Consistent With The Requirements Of “Non-Revenue” Traffic.**

A byproduct of SECI’s operating plan methodology – which bases the SFRR’s operations on a list of historical CSXT trains rather than the specific requirements of its selected traffic group – is the fact that virtually all of the general freight trains “adopted” by SECI contain not only cars included in the SFRR’s traffic group, but also cars that SECI chose not to include in the SFRR traffic group. Indeed, such non-SFRR cars constitute the majority of all of the traffic in the CSXT trains adopted by SECI. In developing its operating plan, SECI makes the absurd assumption that SFRR trains would carry not only “selected” traffic but also this massive volume of non-SFRR traffic (which SECI refers to as “non-revenue loads”). As SECI explained in its Opening Evidence:

[T]he SFRR’s trains may contain non-SFRR cars, to the extent they are received in interchange from CSXT or another railroad with traffic that is not included in the SFRR’s traffic group. Any such non-SFRR cars remain on the SFRR’s trains, and the SFRR carries them along with its own cars. (SECI Open. at III-D-107.)

Apparently mindful of the unprecedented nature of this assumption, SECI brazenly articulates a new “SAC principle” that would validate SECI’s methodology:

A SARR has two choices in this kind of situation. It can either remove the non-SARR cars from the train and give them back to the incumbent at the interchange point for placement and movement in other trains and then operate a train with the remaining cars, or it can move the entire train intact, as received from the incumbent, on its lines. (SECI Reb. at III-C-6.)

Under the Board’s SAC regulations and precedents, a SARR has no such “choice.” To the contrary, it is well-established that a Complainant is required to present an operating plan “specifically tailored to serve . . . . the traffic group selected by the complainant.” *Otter Tail* at 6.<sup>36</sup> While a different rule permitting a Complainant to posit a SARR that handles cars not included in its traffic group may be necessary to legitimize the arithmetic methodology employed by SECI in this case, such a rule has no basis in – indeed, it is patently inconsistent with – SAC theory.

Not only does SECI’s self-serving “rule” violate established SAC principles, it defies logic as well. SECI’s suggestion that a SARR has the option to “remove the non-SARR cars from the train and give them back to the incumbent at the interchange point” (SECI Reb. at III-C-6 (emphasis added)) necessarily assumes that the incumbent carrier would tender non-SARR traffic to the SARR in interchange in the first place. Such an assumption is utterly inconsistent with the manner in which interchange is conducted in the rail industry. A railroad does not “interchange” to a connecting carrier cars that are the forwarding carrier’s (not the receiving carrier’s) traffic, only to receive the same cars back from the receiving carrier after they are removed from the train by the receiving carrier. Rather, the forwarding railroad delivers to the receiving carrier only those cars that are intended to be interchanged to the receiving carrier. SECI’s “rule” turns this everyday practice on its head.

SECI relies upon a { } between CSXT and its affiliate, CSXI, as precedent for both its “non-revenue” traffic concept and the per-car amount of the

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<sup>36</sup> See also *Duke/CSXT* at 413; *Duke/NS* at 99.

“merchandise line-haul credit” that SECI awards to the SFRR for handling that traffic. (SECI Open. at III-A-23-25; SECI Reb. at III-D-142-43.) However, the { } provides no support for either SECI’s nonsensical “rule” or its proposed merchandise line-haul credit. {

} By

contrast, under SECI’s “non-revenue” traffic concept, a SARR can, in essence, force the incumbent carrier to turn over all of its traffic for handling by the SARR, even where the cars will move beyond the interchange point in the incumbent carrier’s account, and the incumbent has the ability to transport the traffic over its own lines. The Board should not countenance SECI’s self-serving attempt to buttress its unprecedented operating plan methodology (and to reduce the SFRR’s operating expenses by more than \$100 million in the base year) by fabricating the concept of “non-revenue” traffic.<sup>37</sup>

Even more nonsensical is SECI’s apparent assumption that the SFRR would have no responsibility for meeting the needs of shippers whose cars were handled by the SFRR as “non-revenue” traffic. The “non-revenue” traffic posited to move in SFRR trains includes a substantial number of cars and intermodal units that, in the real world, originate or terminate (or both) at points replicated by the SFRR’s lines. Nevertheless, SECI posits that all “non-revenue” traffic would move “intact” from the SFRR on-junction at which a train is received from CSXT to an SFRR off-junction – “that is, the SFRR

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<sup>37</sup> SECI suggests that CSXT “accepted” its bizarre “non-revenue” concept in its Reply Evidence. SECI Reb. at III-D-143. CSXT did no such thing. To the contrary, in the very passages cited by SECI, CSXT made clear that “SECI’s ‘non-revenue’ traffic concept is neither permitted under SAC procedures nor justified by SECI’s claim that the characteristics of cars that it treated as “non-revenue loads” could not be gleaned from the data produced by CSXT.” CSXT Reply at III-C-17-18 n.15. The only reason that CSXT itself included “non-revenue” traffic in its SFRR operating plan was to ensure that the record contains one operating plan that satisfies the needs of all customers whose traffic SECI posits would move in SFRR trains. *Id.* Unlike SECI, CSXT presented an operating plan that fully accounts for the handling of “non-revenue” cars in accordance with customer requirements.

[would] not switch non-SFRR revenue cars out at origin, destination or any intermediate location.”

SECI Open. at III-C-22 (emphasis added). In other words, SECI’s operating plan assumes that loaded “non-revenue” cars destined to a customer located on the SFRR would move in an SFRR train past the customer’s facility, be re-interchanged by SFRR to CSXT at an off-SARR junction, and subsequently be carried by CSXT over its own lines back to the shipper’s facility. Indeed, some of the “non-revenue” cars that the SFRR would handle in this manner are loaded cars going to or coming from the same customer as SECI’s “selected” revenue traffic! Moreover, as discussed below (at 52-57), SECI’s methodology for selecting historical CSXT trains for inclusion in the SFRR’s operating plan resulted in a plan that fails to provide all of the line-haul train services necessary to transport “non-revenue” cars between the on-SARR junction and off-SARR location.

SECI’s “plan” for handling non-revenue cars flies in the face of a SARR’s obligation to provide service that meets the needs of shippers.<sup>38</sup> SECI’s assumption would result in service to “non-revenue” shippers that is far worse than the service provided to those shippers by CSXT today. Accordingly, SECI’s operating plan for “non-revenue” traffic is, under the Board’s precedents, not “feasible.” The Board should adopt CSXT’s operating plan, which provides service both to SFRR’s “selected” traffic and to “non-revenue loads” in a manner consistent with every customer’s needs.

**5. SECI’s Evidence Is Replete With Errors That Render Its Operating Plan And Operating Expense Estimates Worthless.**

Even if the arithmetic-based methodologies SECI employed to develop its putative operating plan were legally and theoretically valid – which they are not – SECI’s implementation of those methodologies was replete with errors that render its operating plan unreliable. For example, when SECI “adopted” CSXT trains for its operating plan, it classified those trains as road, local, and yard

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<sup>38</sup> Indeed, SECI does not explain how a “non-revenue” car originating at a location along the SFRR’s lines would find its way into the SFRR train that is supposed to deliver the car to CSXT if the SFRR train does not stop to pick it up!

trains. However, SECI misclassified a significant number of its adopted trains as yard trains when a simple perusal of the train list would have revealed that these trains were really road trains traveling over long distances. In addition, SECI's train-matching methodology created gaps in service for both SFRR-selected traffic and "non-revenue" cars. The fundamental errors committed by SECI in implementing its ill-conceived operating plan methodology fatally undermine the validity of both SECI's operating plan and its related operating expense estimates.

**a. SECI Misclassified Road Trains As Yard Trains And Included Trains That Could Not Travel On The SARR.**

In another example of SECI's failure to properly interpret and apply the data provided to it, SECI misclassified many of the historical CSXT trains that SECI adopted as "SFRR trains." Specifically, SECI selected 2,282 CSXT trains that it identified as "yard" trains (even though SECI failed to build any of the yards from which these trains operate in the real world). Of the 2,282 "yard" trains that SECI pulled from CSXT's database, almost 600 are not, in fact, yard trains. *See* SECI Reb. WP "SFRR Base Year Service Units Rebuttal.xlsx", Base\_Year\_Trains tab. Among the trains misclassified by SECI as "yard" trains are trains that the data indicate operated between Wauhatchie, TN and Jacksonville, FL; between Richmond, VA and Wauhatchie; and between Jacksonville and Richmond. *Id.*

This fundamental error appears to be a direct result of SECI's operating plan methodology, which relied upon SECI witness Crowley (who does not have any independent operating expertise) to "adopt" the SFRR's trains from CSXT's historical databases rather than having its operating expert (Mr. Reistrup) design train services tailored to the SFRR's selected traffic group. *See* SECI Open. at III-C-21; CSXT Reply at III-C-65. Surely, any competent operating expert who reviewed SECI's train list would have immediately recognized that these trains were road trains rather than yard trains. By misidentifying these trains as "yard" trains, SECI excluded from its RTC Model simulation road trains that would provide linehaul service for SFRR.

**b. SECI's Train Matching Methodology Resulted In An Operating Plan With Significant Gaps In Service.**

In creating its operating plan, SECI employed an arbitrary methodology that involved “adopting” only those CSXT historical trains that carried at least 15 cars of SFRR “selected” traffic in 2008. On Reply, CSXT showed that the exclusion of trains carrying fewer than 15 selected cars caused SECI’s operating plan to ignore segments of the movement of its “selected” traffic where that traffic enters the SARR on an “adopted” train and is switched to a non-adopted train before the traffic leaves the SARR. CSXT Reply at III-C-47-48. Even if, in the real world, CSXT had later switched that traffic to another train that SECI “adopted,” SECI made no provision to move that traffic between its “adopted” trains. *Id.* This arbitrary approach produced serious errors in SECI’s analysis. The exclusion of trains that carried “selected” traffic simply because SECI was unable to find at least 15 “selected” cars on that train resulted in SECI intentionally ignoring potentially significant portions of the movement for both its “selected” traffic and “non-revenue” cars.

On Rebuttal, SECI claims that its methodology foreclosed this possibility by removing any previously “selected” cars from the SFRR traffic group whenever a train carrying less than 15 selected cars was dropped from SECI’s train list. SECI Reb. Ex. I-1 at 20. SECI described its methodology as follows:

First, SECI identified carloads in the 2008 base period that utilized the SFRR route. SECI then identified a subset of this traffic to include in the SFRR traffic group. SECI matched the CSXT waybill revenue carloads included in the SFRR traffic group with the CSXT carload event data to identify all of the trains on which the carloads included in the SFRR traffic group moved from origin to destination. SECI evaluated these individual trains to determine how many SFRR revenue carloads were included on each train. SECI then excluded general freight and coal trains that contained fewer than 15 SFRR revenue carloads and intermodal trains that contained fewer than 10 SFRR revenue carloads in the peak year. Next, SECI identified all of the SFRR revenue carloads on the excluded train and removed these carloads from the SFRR traffic group. (*Id.*)

SECI's 15-car train matching methodology leaves shipments stranded, whether those shipments are classified as "selected" traffic or "non-revenue loads." Even for traffic SECI actually "deselected" as it intended, this methodology results in a failure to provide complete line-haul service to this "deselected" traffic. Indeed, while SECI claims that it didn't intentionally ignore portions of the movement of its selected traffic, it appears to concede that it did, in fact, fail to provide complete line-haul service for "non-revenue" cars. Under SECI's view, it can choose to include CSXT's traffic on SFRR-adopted trains, but ignore how this traffic will move from the on-SARR location of one of its trains to the off-SARR location of another hundreds of miles away.

Moreover, while SECI may have intended to remove all revenue traffic that moved in a CSXT train with fewer than 15 "selected" cars, SECI did not, in fact, do so in every case. SECI's workpapers make it clear that SECI does, indeed, have selected traffic that moved on CSXT trains that were not "adopted" for the SFRR, and that its operating plan therefore does not provide for the entire movement of those "selected" cars.<sup>39</sup> This appears to have resulted from errors committed by SECI in executing its methodology for "adopting" CSXT trains. Specifically, it appears that some of the trains on which SECI's selected traffic moved in 2008 were not included in SECI's "initial" train list (*i.e.*, the list of trains compiled by SECI before trains with fewer than 15 revenue cars were removed) and therefore were never considered in the removal process that SECI used in its matching methodology.

For example, SECI's selected traffic for the SFRR included a shipment of three cars from Brewster, MN to Garden City, GA under waybill number 372310. As the excerpts from SECI's workpapers below show, SECI selected this shipment and routed it on the SFRR between Evansville, IN and East Savannah, GA. See CSXT Reply WP "GF\_Final\_Shipments\_Details.zip" (analyzing SECI

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<sup>39</sup> See CSXT WP "GF\_Final\_Shipments\_Details.zip" (analyzing SECI workpapers and matching SECI selected traffic with waybill data); SECI WP "Base\_Year\_2008\_Train\_List\_Final.xlsx"; SECI Reb. WP "SFRR Base Year Service Units Rebuttal.xlsx."

workpapers and matching SECI selected traffic with waybill data). However, SECI only “adopted” the Q645 train for the segment from Evansville, IN to Nashville, TN, and the Q410 train for the segment from Waycross, GA to East Savannah, GA. SECI did not “adopt” the Q685 train that moved these SFRR-selected cars from Nashville, TN to Waycross, GA (highlighted below). See SECI WP “Base\_Year\_2008\_Train\_List\_Final.xlsx”; SECI Reb. WP “SFRR Base Year Service Units Rebuttal.xlsx.” Indeed, it appears that not only was this Q685 train missing from SECI’s final train list, it was never included in SECI’s “initial” train list.<sup>40</sup> Consequently, SECI’s operating plan fails to provide the line-haul service required to move these selected shipments along the SFRR between Nashville and Waycross.

Shipment Data For Waybill 372310 Date 07/24/2008

SHIPMENT_GK	ORIGIN_CITY	ORIGIN_STATE	DESTINATION_CITY	DESTINATION_STATE	WAYBILL_I	WAYBILL_D	ON_JCT_SCAC_I	ON_JCT_CITY_C	ON_JCT_TS	REVENUE_NET	REVENUE_STCC_I	PRICE_AUT_HDRITY_C	Seminole Routing For Waybill 372310			
													CSX_Event_ARR_City	nt_Ons_ARR_Ste	CSX_Event_OFFSAR_R_City	CSX_Even_t_OFFSARR_State
110144910	BREWSTER	MN	GARDEN CITY	GA	372310	07/24/08	UP	CHGO	7/31/08 5 34	\$1,148	2899416	CSXT28994	EVANSVILLE	IN	EAST SAVANNAH	GA
110144911	BREWSTER	MN	GARDEN CITY	GA	372310	07/24/08	UP	CHGO	7/31/08 5 34	\$1,148	2899416	CSXT28994	EVANSVILLE	IN	EAST SAVANNAH	GA
110144912	BREWSTER	MN	GARDEN CITY	GA	372310	07/24/08	UP	CHGO	7/31/08 5 34	\$1,148	2899416	CSXT28994	EVANSVILLE	IN	EAST SAVANNAH	GA

Event Data For Waybill 372310 Date 07/24/2008

DEPARTURE_TS	FROM_CITY	FROM_STATE	TRAIN_PROFIL	TRAIN_D	TRAIN_ORGINATIO	ARRIVAL_TS	TO_CITY	TO_STATE	E	Shipments	
7/31/08 5 34	NULL	NULL	Y132	(blank)	01/01/00	1/1/00 0:00	CHICAGO	IL		3	
8/1/08 4 34	CHICAGO	IL	Q645	1	08/01/08	8/3/08 14:00	DANVILLE	IL		3	
8/1/08 16 30	DANVILLE	IL	Q645	1	08/01/08	8/2/08 1 55	EVANSVILLE	IN		3	
8/2/08 4:10	EVANSVILLE	IN	Q645	1	08/01/08	8/2/08 12:04	NASHVILLE	TN		3	Seminole SARR Movement*
8/3/08 18 30	NASHVILLE	TN	Q685	3	08/03/08	8/4/08 3 45	BIRMINGHAM	AL		3	
8/4/08 7 00	BIRMINGHAM	AL	Q685	3	08/03/08	8/4/08 23 45	WAYCROSS	GA		3	
8/5/08 21.55	WAYCROSS	GA	Q410	5	08/05/08	8/6/08 3 00	EAST SAVANNAH	GA		3	
8/19/08 9 30	EAST SAVANNAH	GA	Y125	19	08/19/08	1/1/00 0 00	NULL	NULL		1	

\* Seminole does not include Train Q685 for 08/03/2008 in its base year train list

Even if SECI had deselected these shipments (which would, upon removal from the SFRR’s traffic group, become “non-revenue” cars while on the SFRR) from its revenue traffic as it intended, SECI’s operating plan does not provide any mechanism to get the cars from Nashville to Waycross. Under SECI’s operating plan the shipments would move along the SFRR on the “adopted” Q645 train from Evansville, IN to Nashville, TN. The same shipments would later appear on the “adopted” Q410

<sup>40</sup> See SECI WP “RATE\_CASE\_EVENT\_2008\_TRAIN\_ID\_SARR\_MILEPOSTS\_LOCATIONS\_AND\_TMES\_WITH\_CAR\_COUNT\_KES.xlsx.”

train operating from Waycross, GA to East Savannah, GA, without any apparent intermediate movement on the SFRR between Nashville and Waycross.<sup>41</sup>

In another example, SECI's selected traffic for the SFRR included a shipment of seven cars from Mt. Vernon, IN to Chattanooga, TN under waybill number 422311. As the excerpts from SECI's workpapers below show, SECI selected these cars and routed them on the SFRR between Evansville, IN and Wauhatchie, TN (near Chattanooga). *See* CSXT WP "GF\_Final\_Shipments\_Details.zip" (analyzing SECI workpapers and matching SECI selected traffic with waybill data). The cars purportedly moved on three trains: from Evansville to Nashville on the Q557 train, from Nashville to Wauhatchie on the Q585, and on a yard train Y224 to deliver the shipment to the customer. However, the only train that SECI "adopted" was the yard train (at a location where the SFRR would not have a yard). *See* SECI WP "Base\_Year\_2008\_Train\_List\_Final.xlsx"; SECI Reb. WP "SFRR Base Year Service Units Rebuttal.xlsx."

In other words, SECI's operating plan does not include any of the road trains required to move these selected cars! The source of this error appears to be that the Q557 and Q585 trains for the relevant dates were never picked up by SECI in creating its "initial" train list for the SFRR.<sup>42</sup> As a result of SECI's methodology, its operating plan provides no service whatsoever for these selected cars!

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<sup>41</sup> It is theoretically possible that SECI silently assumes that it can hand this shipment back to CSXT at Nashville to cross the gap. However, that assumption could hardly satisfy customer requirements, as it would result in a movement involving six interchanges. Nor has SECI made any provision in its operating plan for these assumed interchanges: SECI has not provided for the time, the facilities, or the costs associated with the extra interchanges necessitated by such an assumption.

<sup>42</sup> *See* SECI WP "RATE\_CASE\_EVENT\_2008\_TRAIN\_ID\_SARR\_MILEPOSTS\_LOCATIONS\_AND\_TMES\_WITH\_CAR\_COUNT\_KES.xlsx."

Shipment Data For Waybill 422311 Date 08/05/2008

Seminole Routing For Waybill 422311

SHIPMENT_G K	ORIGI N_STA ORIGIN_CITY	DESTIN CIT TE	ATIO <sub>4</sub> STATE	WAYBILL_J	WAYBILL_D	ON_JCT_SCAC I	ON_JCT_ CITY_C	ON_JCT_TS	REVENU E_NET	REVENU E_STCC_J	PRICE_AUT HORITY_C	CSX_Event_On SARR_City	nt_OnSA RR_State	CSX_Event_Offs t_CITY	CSX_Event SARR
110348608	MT VERNON	IN	CHATTANOOGA TN	422311	8/5/2008	EVWR	LEVEVW	8/5/2008 13 53	\$420	2092314	CSXT80991	EVANSVILLE	IN	WAUHATCHIE	TN
110322254	MT VERNON	IN	CHATTANOOGA TN	422311	8/5/2008	EVWR	LEVEVW	8/5/2008 13 53	\$420	2092314	CSXT80991	EVANSVILLE	IN	WAUHATCHIE	TN
110348607	MT VERNON	IN	CHATTANOOGA TN	422311	8/5/2008	EVWR	LEVEVW	8/5/2008 13 53	\$420	2092314	CSXT80991	EVANSVILLE	IN	WAUHATCHIE	TN
110343321	MT VERNON	IN	CHATTANOOGA TN	422311	8/5/2008	EVWR	LEVEVW	8/5/2008 13 53	\$420	2092314	CSXT80991	EVANSVILLE	IN	WAUHATCHIE	TN
110326640	MT VERNON	IN	CHATTANOOGA TN	422311	8/5/2008	EVWR	LEVEVW	8/5/2008 13:53	\$420	2092314	CSXT80991	EVANSVILLE	IN	WAUHATCHIE	TN
110322257	MT VERNON	IN	CHATTANOOGA TN	422311	8/5/2008	EVWR	LEVEVW	8/5/2008 13 53	\$420	2092314	CSXT80991	EVANSVILLE	IN	WAUHATCHIE	TN
110322251	MT VERNON	IN	CHATTANOOGA TN	422311	8/5/2008	EVWR	LEVEVW	8/5/2008 13 53	\$420	2092314	CSXT80991	EVANSVILLE	IN	WAUHATCHIE	TN

Event Data For Waybill 422311 Date 08/05/2008

DEPARTURE_ TS	FROM_ FROM_CITY	STAT E	TRAIN_PROFILE_J	TRAIN_ORI DAY_J	TRAIN_GINATION_ D	ARRIVAL_TS	TO_CITY	TO_STAT E	Shipments
8/5/08 13 53	NULL	NULL	ADVI	MT	01/01/00	1/1/00 0:00	EVANSVILLE	IN	7
8/6/08 18:00	EVANSVILLE	IN	Q557	6	08/06/08	8/7/08 7 45	NASHVILLE	TN	7
8/8/08 5:50	NASHVILLE	TN	Q585	8	08/08/08	8/9/08 13 55	WAUHATCHIE	TN	7
8/15/08 7:45	WAUHATCHIE	TN	Y124	15	08/15/08	8/15/08 16:30	D INDUSTRY	(blank)	7

Seminole SARR Movement\*

\* Seminole does not include Train Q557 for 08/06/2008 or Train Q585 for 08/08/08 in its base year train list

Likewise, SECI’s selected traffic for the SFRR included a shipment of 67 cars from Mcleansboro, IN to Chattanooga, TN under waybill number 424815. As the excerpts from SECI’s workpapers below show, SECI selected this shipment and routed it on the SFRR between Evansville, IN and Wauhatchie, TN (near Chattanooga). See CSXT WP “GF\_Final\_Shipments\_Details.zip” (analyzing SECI workpapers and matching SECI selected traffic with waybill data). This shipment of 67 cars moved on the SFRR from Evansville to Wauhatchie on the G238 train, and two different yard trains delivered the shipment to the customer. However, the only trains SECI “adopted” were the yard trains (in a location where SECI did not specify any yard). See SECI WP “Base\_Year\_2008\_Train\_List\_Final.xlsx”; SECI Reb. WP “SFRR Base Year Service Units Rebuttal.xlsx.”

Just as in the above example involving waybill number 422311, SECI’s operating plan does not include any of the trains required to move these 67 selected revenue cars, just the terminating yard trains, for which its operating plan did not include the facilities required. Because SECI’s 15-car train matching methodology would not have deselected this train, or the selected traffic in waybill 424815, the source of this error is certain to be that the G238 train for the relevant date was missing from SECI’s

“initial” train list.<sup>43</sup> Yet again, SECI’s errors resulted in its operating plan failing to provide service for its selected traffic.

Shipment Data For Waybill 424815 Date 11/10/2008											Seminole Routing For Waybill 424815					
CARS	ORIGIN_CITY	STATE	DESTINAT		WAYBILL_I	WAYBILL_D	ON_ICT_TS	REVENUE_NET	REVENUE_STCC_J	PRICE_AUT	HORITY_C	CSX_Event		CSX_Event		
			ION_CITY	ION_STA								On	Off	SARR_City	State	RR_City
67	MCLEANSBORO	IL	CHATTAN	TN	424815	11/10/2008	11/11/2008 18 41	82067.63	113215	CSXT80991	EVANSVILLE	IN	WAUHATCHIE	TN		

Event Data For Waybill 424815 Date 11/10/2008										
DEPARTURE_TS	FROM_CITY_N	STATE	OFFILE_I	AY_I	on_d	ARRIVAL_TS	TO_CITY_N	TO_STATE	L	train_onginet
11/11/08 18 41	NULL	NULL	ADVI	NT	11/10/00 00	11/10/00 00	EVANSVILLE	IN	67	
11/11/08 20.15	EVANSVILLE	IN	G238	11	11/11/08 0 00	11/12/08 3:05	KAYNE AVENUE	TN	67	Seminole SARR Movement*
11/12/08 3.10	KAYNE AVENUE	TN	G238	11	11/11/08 0:00	11/12/08 10 44	WAUHATCHIE	TN	67	
11/12/08 7 45	WAUHATCHIE	TN	Y124	12	11/12/08 0 00	11/12/08 16 15	PLACED/PULLED	INDUSTRY	40	
11/13/08 16 30	WAUHATCHIE	TN	Y202	13	11/13/08 0.00	11/13/08 17 30	PLACED/PULLED	INDUSTRY	27	

\* Seminole does not include Train G238 for 11/11/2008

As the above examples show, SECI’s methodology of attempting to “adopt” CSXT trains in lieu of developing its own operating plan specifically tailored to serve its selected traffic leads to gaps in service that render the SFRR incapable of meeting the needs of its selected traffic group. SECI’s failure to identify (and select) all of the CSXT trains on which its selected traffic moved during 2008 caused it to omit trains from its operating plan train list that are required to serve the SFRR’s traffic group.

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As the foregoing discussion demonstrates, SECI’s operating plan utterly fails to provide the services – including pick-ups, set-offs, switching at intermediate points and, in some cases, even line-haul service – necessary to meet the needs of the SFRR’s general freight and intermodal customers. Moreover, both SECI’s operating plan and the RTC Model simulation upon which SECI relies in attempting to prove its “feasibility” incorporate assumptions and inputs that defy basic precepts of real-world railroading. These glaring deficiencies amount to a clear failure by SECI to demonstrate that its operating plan “would meet the needs of the traffic group that it selected.” *CSXT/Duke* at 430. Therefore, the Board should reject SECI’s operating plan in its entirety.

<sup>43</sup> See SECI WP “RATE\_CASE\_EVENT\_2008\_TRAIN\_ID\_SARR\_MILEPOSTS\_LOCATIONS\_AND\_TMES\_WITH\_CAR\_COUNT\_KES.xlsx.”

**B. CSXT's Operating Plan Provides For The Facilities And Personnel Required To Meet The Needs Of The SFRR's Traffic And Should Be Adopted.**

The Board has stated that “[w]hen the [operating] plan presented in a SAC case by the complainant is infeasible, it is generally incumbent on the defendant railroad to present a realistic alternative so that the SAC analysis may be completed.” *CSXT/Duke* at 430 (citing *NS/Duke* at 100-01). Consistent with that mandate, CSXT witness Gibson designed and presented an operating plan for the SFRR that provides the appropriate level of track and facilities, locomotives and cars, crews and other operating personnel, repair facilities, and management and administrative support to enable the SFRR to serve its traffic in the least cost, most efficient manner, consistent with customer requirements and in accordance with applicable laws and safe operating practices.

CSXT's operating plan for the SFRR addresses, and properly accounts for, the fatal deficiencies in SECI's operating plan:

First, CSXT's operating plan provides service for every car (including both “selected” traffic and cars treated by SECI as “non-revenue loads”) in accordance with customer requirements. Using the very same data produced to SECI in discovery, CSXT identified the origin, destination, commodity and customer of every car that would move in a SFRR train. CSXT Reply III-C-42-50. Armed with that complete shipment information, CSXT witness Gibson designed a detailed operating plan for the SFRR that includes a daily train service plan and all of the local blocking and switching operations required to handle every car in accordance with customer requirements. By contrast, SECI never even bothered to identify the SFRR's merchandise customers – much less consider the locations at which the SFRR would have to provide local switching services to serve them.

Second, CSXT's operating plan accounts for all of the services – including pickups and setoffs at customer facilities, intermediate switching, and car and train blocking at yards along the SFRR system– required to handle all of the SFRR's traffic safely and efficiently across the SFRR system. The

operating plan presented by witness Gibson includes all of the road, local and yard train operations needed to provide those services. CSXT Reply at III-C-51-66. CSXT's operating plan provides daily scheduled train service to the SFRR's merchandise customers. By contrast, SECI's operating plan and RTC Model treat trains as if they move "intact" across the SFRR system, does not identify how (or where) the SFRR would physically perform local operations, and contains "gaps" in through train service for both "non-revenue loads" and some cars in the SFRR's selected traffic group. *Id.*

Third, CSXT incorporates all of the physical facilities (including switching yards, sidings, spurs and industry tracks) required to execute its operating plan. CSXT Reply III-C-66-74. Specifically, witness Gibson determined that, in order to meet the needs of its traffic, the SFRR would need to construct and operate 13 regional and local switching yards (*id.* III-C-67-69); six intermodal terminals (*id.* III-C-70-72) and 11 "Transflo" facilities (*id.* III-C-72-74).<sup>44</sup>

Fourth, and finally, CSXT's operating plan and RTC Model simulation fully account for the time required to perform both over-the-road train movements and local pickups, setoffs and switching operations. Unlike SECI's fatally deficient RTC simulation, CSXT's RTC simulation illustrates the movement of each SFRR train as it would actually proceed along the SFRR's lines, including the stops that each train would have to make en route in order to serve the SFRR's customers. *See* CSXT Reply Exs. III-B-4 and III-B-5. Equally important, CSXT's RTC Model simulation depicts the interaction between SFRR road trains, local trains and yard assignments as they would occur in the real world. By contrast, SECI intentionally chose not to include in its RTC Model any of the SFRR's local and yard trains, or any of the stops that road trains would be required to make to serve customers or to transfer cars between trains at intermediate points. As discussed above, SECI's failure to model those critical

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<sup>44</sup> On Rebuttal, SECI grudgingly agreed (at III-B-22-23) that the SFRR would require additional yard tracks and facilities to handle intermodal and "Transflo" traffic, but continued to insist that merchandise classification yards are unnecessary. However, SECI proffered no credible explanation as to how the SFRR could handle its massive volume of merchandise traffic without such facilities.

elements of the SFRR's operations – and, in particular, the impact of those operations on the time required to provide service – caused SECI to understate the number of locomotives, rail cars and operating personnel that would be needed to conduct the SFRR's operations. CSXT's RTC simulation offers a complete picture of the SFRR's operations, and provides reliable evidentiary support for CSXT's estimates of the SFRR's yard, locomotive, car, crew and other resource requirements. *See* CSXT Reply III-C-83-84, III-D-26-35.

**C. SECI's Criticisms Of CSXT's Operating Plan Are Meritless.**

SECI devotes a significant portion of its Rebuttal Evidence to a (futile) attack on the feasibility of CSXT's well-documented operating plan. SECI argues that "CSXT has not demonstrated that its operating plan is capable of providing the service required by the SFRR's customers." SECI Reb. at III-C-3. Positing that the feasibility of an operating plan is "usually measured by transit times" (*id.* at III-C-5), SECI claims that "there is no way to determine whether CSXT's operating plan enables the SFRR to meet its customers' transportation requirements" because (according to SECI) "it [supposedly] calls for new service and new operations that are significantly different from those provided by CSXT [today]." *Id.* at I-32-33. SECI contends that its operating plan is superior to CSXT's because SECI's plan is "based on the operation of trains that correspond to the real-world trains carrying SFRR traffic in the base year (2008)." *Id.* at I-34.

SECI's criticisms of CSXT's operating plan are meritless. As an initial matter, SECI's suggestion that train transit time is an appropriate benchmark for measuring the level of service for merchandise traffic is simply incorrect. *Id.* at III-C-40-41. Train "cycle time" may be relevant in evaluating service quality for unit train movements of coal and other commodities, because unit trains move intact from origin to destination and back to the same origin, without stopping at intermediate points to add or remove cars. By contrast, as SECI itself acknowledges, merchandise trains "do not shuttle or 'cycle' back and forth between specific origins and . . . destinations." *Id.* at III-C-40. Rather,

as CSXT's Reply (at III-C-51) explained, loaded merchandise cars move from origin to destination in multiple trains via intermediate switching yards, where they are "classified" into blocks with other merchandise cars moving in the same direction toward their respective ultimate destinations. When a merchandise car is unloaded by the consignee, it generally does not return via the reverse route to the same origin. Rather, it is moved from the consignee's facility to a switching yard from which it can be directed to another location on the carrier's lines at which that car type is needed for loading. *Id.*

Given this reality, train transit time alone is not a valid measure of the level of service provided with respect to any individual merchandise car. Rather, service quality for merchandise freight is a function of several factors, including the frequency with which a customer's facility is served; the overall transit time between origin and destination (including time spent by individual cars at intermediate switching yards); and the reliability of a carrier's service performance (*i.e.*, how consistent the carrier's service is).<sup>45</sup> Measured against the appropriate standard, CSXT's operating plan for the SFRR provides merchandise service that is at least equal to that provided by CSXT in the real-world today. As designed by CSXT witness Gibson, the SFRR operates a "scheduled" railroad with daily service available to every merchandise customer. Indeed, the SFRR operates multiple daily trains on certain routes (*e.g.*, the I-95 corridor), just as CSXT does today. Merchandise cars are blocked and routed via the least circuitous, most efficient route possible. CSXT Reply at III-C-51-58. The merchandise service contemplated by CSXT's operating plan is far superior to that provided by SECI's operating plan which, among other things, provides no local service whatsoever to on-line shippers of "non-revenue" cars; fails to provide complete road train service for a substantial number of "non-

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<sup>45</sup> In any event, the train transit times generated by SECI's RTC simulation are meaningless. As explained above (at 43-47), the bogus "transit times" for trains moving "intact" across the SFRR's lines in SECI's RTC simulation fail to take account of the time that merchandise cars must spend at intermediate yards awaiting switching, or the real-world interaction between road trains and local/yard trains along the SFRR network.

revenue” cars (and even some of SFRR’s “selected” traffic); and takes no account of conflicts between SFRR road trains and local/yard trains (or the impact of such conflicts on overall transit time). It is SECI – not CSXT – whose operating plan provides poorer service than CSXT does in the real world.

SECI’s reliance upon the Board’s decisions in *Duke/CSXT* and *Duke/NS* in arguing that CSXT’s operating plan should be rejected because it “alter[s] the service the affected shippers would receive” is misplaced. SECI Reb. at I-32. In *Duke/CSXT*, the Board rejected Complainant’s operating plan because it assumed that coal receivers would accept coal from mine origins other than their real-world sources, and increased the length of coal unit trains without demonstrating that origin mines and destination plants had the ability to accommodate such longer trains. *Duke/CSXT* at 427-28. In *Duke/NS*, the Board likewise rejected Complainant’s operating plan because it failed to incorporate the variety of train sizes (including LTL shipments) that coal shippers were accustomed to moving over the NS lines replicated by the SARR. *Duke/NS* at 105. In this case, CSXT made no such changes in the size of shipments received by the SFRR’s merchandise customers, nor did CSXT alter the fundamental service parameters that CSXT customers are accustomed to today.

SECI’s further complaint that CSXT’s operating plan “erects a wall around the SFRR” by building classification yards, and having the SFRR block cars, at major points of interchange with the incumbent CSXT reflects a lack of familiarity with merchandise railroading. SECI Reb. at I-31-32. As anyone with even a passing knowledge of the U.S. rail system knows, railroads operate major classification yards at the locations where they interchange large volumes of merchandise traffic with connecting carriers. For example, Class I carriers have yards dedicated to merchandise operations at the major “gateways” of Chicago, Kansas City, St. Louis, Memphis, and New Orleans, where massive volumes of merchandise traffic are transferred between carriers on a daily basis. Far from constituting a “wall” between carriers, those yards are essential to enable carriers to interchange merchandise traffic,

and to provide for efficient movement of those cars further along the receiving carrier's system. Likewise, the yards prescribed by CSXT's operating plan at locations such as Alexandria Jct., MD; Atlanta, GA; Princeton, IN; and Richmond, VA are necessary to support the efficient movement of merchandise cars between the lines of the SFRR and CSXT (or other connecting carriers).<sup>46</sup>

Finally, SECI's suggestion that "[its] Rebuttal simulation should be accepted in lieu of CSXT's Reply simulation because the former is based on the operation of trains that correspond to the real-world trains carrying SFRR traffic in the base year (2008)" is nonsense. SECI Reb. at I-34. While the trains "adopted" by SECI may have been pulled from a CSXT database, the modeling of those trains in SECI's RTC simulation bears no resemblance to the manner in which they operate in the real world. In the real world, CSXT road trains do not move "intact" from origin to destination without stopping at customer facilities to pickup or setoff customer cars, or at intermediate yards to add or drop off blocks of cars. Nor do CSXT's real-world road trains run freely across the CSXT network without ever encountering local and/or yard trains occupying the tracks while providing local service. In short, SECI's operating plan and RTC simulation do not – in any meaningful sense – "correspond to the real-world trains" that CSXT operated during 2008.

By contrast, CSXT's RTC simulation incorporates all of the operations necessary to provide service to every car moving in an SFRR train in a manner consistent with real-world customer requirements. For that reason, CSXT's RTC simulation (and the operating plan that it models) clearly constitute the best record evidence.

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<sup>46</sup> SECI's ludicrous complaint that "CSXT even went so far as to change the blocking of general freight trains *before* they arrived at the on-SARR point" further reflects SECI's lack of understanding of real-world merchandise railroading. SECI Reb. at I-32 n.40. In the SAC analysis, cars that move over the SFRR become "interline" traffic, whereas such movements are "single line" shipments on CSXT in the real world. Given that the incumbent CSXT interchanges those cars with the SFRR at on-SARR junctions (rather than handling them on its own lines), it is not surprising that CSXT would block those cars differently. The car blocking plan developed by witness Gibson promotes SARR efficiency by providing for the most efficient handling of the SFRR's traffic on both its network and on CSXT's lines.

### **III. THE BOARD SHOULD ACCEPT CSXT'S TRAFFIC GROUP EVIDENCE.**

#### **A. Complainant's SAC Presentation is Fundamentally Defective Because it Relies Upon Impermissible and Unsupported Off-SARR Re-Routes.**

Seminole's SARR design and traffic selection and routings in its case-in-chief involved widespread off-SARR re-routing of crossover traffic. This unusual and presumptively impermissible approach re-routes SARR traffic in a manner that would require changes to the route the crossover traffic would follow on the residual CSXT system, *i.e.*, once that traffic leaves the lines replicated by the SARR. Such changes would force the residual incumbent – here CSXT – to alter its routing and operations in order to permit the re-routings posited by the Complainant's SAC presentation. Because of the additional complexity and potential incoherence such off-SARR re-routes introduce to a SAC analysis, the Board has indicated that such re-routes are presumptively invalid: the Board will consider such re-routes only if the Complainant's evidence both: (i) demonstrates how crossover revenues should be allocated in accordance with the defendant carrier's actual costs; *and* (ii) presents an alternative SAC analysis without off-SARR re-routed traffic. *See WFA II* at 14-15.

Disregarding the Board's requirements for off-SARR re-routes, SECI included in its case-in-chief off-SARR re-routes between one hundred eighty-three different origin-destination pairs without any attempt whatsoever to allocate crossover revenues in the manner prescribed by the Board, or to present an alternative SAC analysis without the off-SARR re-routes. *See CSXT Reply* at III-A-1-2; III-A-9-12; *WFA II* at 14-15 (requiring complainant to make additional showings to support off-SARR re-routes). As the Board has explained, the revenue allocation problems that are created by off-SARR re-routes are complex and very difficult to address in a sound and consistent manner in a SAC analysis. For such traffic, “[t]here is seemingly no coherent way to allocate the revenue contribution in accordance with the defendant's costs of providing service.” *Id.* at 15. Moreover, as CSXT illustrated, SECI's external re-routes so far deviate from the actual CSXT system routing that they would require

very substantial changes in CSXT operations and service to its customers. *See, e.g.* CSXT Reply at III-A-17-27 (descriptions and maps of several external re-routes).<sup>47</sup>

Although SECI's Rebuttal narrative repeats the claim that "The SFRR Does Not Include External Re-Routes," its rebuttal evidence belies that assertion. SECI Reb. at III-A-7. Contrary to SECI's protests and express representations to the Board, close review of its evidentiary submissions reveals that – both in its opening case-in-chief and on rebuttal – SECI's traffic routings include numerous off-SARR re-routes without providing the additional supporting evidence and analysis required for such re-routes. As explained below, SECI's unsupported claim that its SAC presentation does not include external, off-SARR re-routes is disingenuous at best.

On rebuttal, SECI divides the impermissible external re-routes identified by CSXT into four traffic categories. Following that general organization, CSXT demonstrates below that each of those traffic categories do indeed rely upon proscribed re-routes, which the Board should remedy by adopting the corrected routings CSXT submitted on Reply.

First, SECI eliminated from its SARR traffic ten coal movements that it now quietly admits "do not move in the real world over lines replicated by the SFRR." SECI Reb. at III-A-7-8; *see* SECI Reb. Ex. III-A-3 at 8 (movements having "SECI Opening Route that Does Not Touch the SARR").<sup>48</sup> Thus, in

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<sup>47</sup> Nor did SECI make any showing that its external re-routes could satisfy the threshold requirements for all re-routed crossover traffic, *i.e.* that the new route is both reasonable and would provide the shipper with the same or superior service to that it receives using the actual route of movement. *See TMPA I* at 18-24; CSXT Reply at III-A-10 (citing cases).

<sup>48</sup> SECI's only explanation of its routing of movements over the SARR that, in actuality, never moved over any CSXT line segment replicated by the SARR is its claim that CSX data made it difficult to determine the actual routing. *See* SECI Reb. at III-A-8. As CSXT demonstrated on Reply, routings of all traffic selected by SECI could be identified using the data CSXT produced in discovery, production that was complete several months before SECI filed its opening evidence. *See* CSXT Reply Ex. I-2. And, as the Board has previously admonished, if a party believes time or data limits do not permit it to submit an accurate case in chief, it should seek a change to the procedural schedule "to enable it to present a full and correct case." *Duke/CSXT*, STB Docket No. 42070, Decision at 4 n.5 (Mar. 25, 2003). Moreover, it strains credulity for SECI to suggest that CSXT traffic data were so difficult for it to follow

the very same section in which it expressly reiterates its claim that the SARR “does not include external re-routes,” SECI drops traffic precisely *because* it constitutes a particularly extreme type of external re-route: traffic whose actual route of movement did not touch the lines replicated by the SARR. *See* SECI Reb. at III-A-7-8.

Similarly, SECI routed all coal traffic between four O-D pairs over external re-routes because it claims to have identified one *single* car (out of thousands) that moved on that alternative route. *See* SECI Reb. Ex. III-A-3 at 3. Even assuming that SECI actually did find data indicating that a single car moved over the SARR route, that purported routing could reflect a data error, a misrouted or bad-ordered car, or any one of a number of other anomalies, and cannot provide an adequate basis for forcing the residual CSXT to change the routing and handling of the unit train shipments that moved on CSXT’s standard routing.<sup>49</sup> Based on the unreasonable notion that “if a single car moved over a routing, the SARR may divert all traffic between an O-D pair to that anomalous routing,” SECI’s own evidence further shows that it externally re-routed 10,300 carloads of coal, using a route actually followed by a total of nine cars (an average of 1½ car per O-D pair). *See id.* Thus, SECI’s own evidence unequivocally shows that its case-in-chief re-routed thousands of carloads of crossover traffic in a

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that it was forced to assume that traffic that by its own admissions did “not touch the SARR” actually moved over the SARR. This was more than a partial alteration of the route: this was diversion of all traffic for several O-D pairs from an entirely non-SARR routing to the SARR.

<sup>49</sup> SECI complains that CSXT’s position on Reply implies that any crossover traffic routing over the lines of the residual incumbent that departs from the carrier’s “predominant” actual route of movement between an O-D pair would be considered an off-SARR reroute, subject to the Board’s evidentiary prerequisites for such traffic. *See* SECI Reb. at III-A-9. Although this is not exactly CSXT’s position in this case, that approach finds support in *WFA*’s explanation that ATC “allocate[s] revenues using the relative densities (and mileage) along the *predominant* route actually used by the defendant carrier to move the traffic in question.” *WFA II* at 15 (emphasis added). For traffic selected by SECI that used more than one route between a given O-D pair, CSXT’s Reply evidence used the actual routes of movement as the basis for SFRR routings and ATC revenue allocation. *See, e.g.,* CSXT Reply III-A-22 n.24. Thus, CSXT’s Reply includes multiple routings between the same origin and destination, in accordance with how the traffic actually moved. Using such actual routings, CSXT simply adjusted SECI’s routings to eliminate its unsupported off-SARR re-routes.

manner that would require the residual CSXT to change its routing and operations, and on rebuttal SECI continues to route most of that traffic over the same external re-route. *See id.* at 3, 8.

Second, for 51 of the external re-routes identified by CSXT, SECI changed the SFRR routing to a corrected routing supplied by CSXT on Reply. *See id.* at 4-5. Here again, SECI's narrative misrepresents to the Board what SECI's workpapers and exhibits actually did on rebuttal. In its Rebuttal narrative, SECI stated that, of the 160 coal crossover movements that it identified as having touched any part of the SFRR, *none* involved off-SARR re-routes. *See* SECI Reb. III-A-11. However, SECI's exhibits show that it shortened its opening SFRR routing to conform to an actual CSXT route of movement for nearly *one-third* (51/160) of those O-D pairs. While SECI does not expressly concede that it made these adjustments in response to CSXT's showing that SECI had impermissibly re-routed traffic between those 51 O-D pairs, if it had changed the routing for some reason other than responding to CSXT's Reply criticism, such new evidence would constitute a prohibited change of SECI's case-in-chief on rebuttal. *See Duke/NS* at 100-01 (complainant's options in responding to defendant's reply challenge are generally limited to showing that its evidence was feasible and supported, or adopting defendant railroad's evidence; complainant may not significantly alter its case-in-chief on rebuttal "without filing a separate petition to supplement the evidentiary record.").<sup>50</sup>

SECI's vague, non-specific claim that it made SARR routing changes based upon "additional event data presented for the first time in CSXT's Reply Evidence" (SECI Reb. at III-A-11) cannot be correct, because CSXT did not supply new event data with its Reply. Tellingly, SECI does not supply any citation to, or details concerning, the new, "additional event data" that it claims CSXT produced on

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<sup>50</sup> The shipper has the burden of proof on SAC issues. *Id.* at 100. The Board has indicated that, in some circumstances, a complainant may be allowed to "supply corrective evidence" if the defendant rail carrier has identified flaws in the case-in-chief but has not provided evidence that can be used in the Board's SAC analysis. Those are not the circumstances here, however, as CSXT provided full explanations of how to correct flaws in SECI's case-in-chief, using data CSXT produced in discovery (well before SECI filed its opening evidence).

Reply. *See id.* at III-A-11-12. CSXT simply demonstrated in its Reply that, using solely the data produced in discovery, SECI could – and should – have identified the actual routing of the traffic it selected for the SFRR. *See* CSXT Reply at III-A-12-13 & Ex. I-2 (rebutting SECI’s claims that data produced by CSXT was insufficient). CSXT provided this explanation not because SECI asserted that CSXT’s data forced it to engage in off-SARR re-routing (to the contrary, SECI’s Opening repeatedly asserted that its case included no external re-routes), but rather because CSXT anticipated that, once the re-routing was exposed, SECI might claim on rebuttal that the re-routing was necessitated by some flaw in the data. *See* CSXT Reply at III-A-12 n.15. Regardless, on Rebuttal SECI used its own *opening* workpaper (“Task2\_Task3\_Compressed\_0626\_2030EST.xlsx”) – not any “new” or “additional” data – as the basis for its rebuttal routings for the movements in question.<sup>51</sup> CSXT produced no new traffic or event data on Reply, and SECI’s unsupported contrary claim cannot excuse its reliance on impermissible external re-routes or its unacknowledged, partial (and incomplete) attempt to correct some of those re-routes on rebuttal.

Third, for external re-routed traffic between 57 O-D pairs, SECI asserts that, because records indicate CSXT moved some cars over an alternative routing, SECI should be allowed to simply assume all traffic would be re-routed from its actual routing to the single alternative routing, without taking into account the effect of this large-scale re-routing on the operations and costs of residual incumbent CSXT. *See* SECI Reb. Ex. III-A-3 at 2-3. Not only does this position flatly violate the Board’s most recent articulation of the requirements for cognizable off-SARR re-routes, it is not supported by any prior Board decision, including those cited by SECI. *See WFA II* at 14-15.

Because of the complexity and myriad difficulties of accurately allocating revenues between the SARR and the residual incumbent for crossover traffic that the complainant seeks to redirect on the

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<sup>51</sup> *See* SECI Reb. WP “Coal Reroute Rebuttal Workpaper.xlsx.”

defendant's residual network over a route "other than the route actually used by the defendant for that traffic," *id.* at 14, the Board requires that, if the complainant seeks to engage in any such off-SARR re-routing, it must make the following showing:

- (1) address how to allocate revenues in accordance with the defendant carrier's *actual* costs of providing the transportation service and (2) provide an alternative SAC analysis where there are no off-SARR reroutes.

*Id.* at 15. Although SECI disputes whether external re-routes for less than all of the traffic between an O-D pair should be treated in accordance with the Board's rule, it does not contend it met those requirements – or made any attempt to satisfy those requirements – for the traffic that it re-routed over a different route than that traffic actually followed on lines not replicated by the SARR. Thus, under the off-SARR re-route rules adopted several years ago in *TMPA*, refined in a major rulemaking (*Major Issues*), and clarified and restated in *WFA II*, SECI's off-SARR re-routes – including the 57 movements it includes in this category, as well as the substantial portions of the other three categories of external re-routes that it did not properly correct on rebuttal – must be rejected.<sup>52</sup>

In opposition to the application of the Board's clear rules regarding off-SARR re-routes, SECI offers a short, misdirected, and largely irrelevant discussion of *TMPA* and two *Duke* cases, all decided before the Board adopted the ATC crossover traffic revenue allocation methodology in 2006. *See* SECI Reb. at III-A-9-11. This confused attempt to justify SECI's disregard for off-SARR re-route rules and

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<sup>52</sup> The Board carefully developed its re-route rules over the course of several adjudications (including *TMPA*, *Duke/NS*, *Duke/CSXT*, *CP&L*, and *WFA II*) and rulemakings, including *Major Issues*, which adopted the ATC revenue allocation methodology and was affirmed by the D.C. Circuit in 2008. Conspicuously, SECI does not discuss the *WFA II* rule – or any rationale for SECI's position that the rule should not apply in this case – at all. Instead, it relies upon a confused and misleading discussion of prior cases to seek a significant change in the existing rules, claiming that its discussion shows those rules somehow tacitly authorize the exception it advocates. Even if the Board were to consider such a significant exception to a fundamental rule (the exception SECI seeks would swallow the rule) – which could have tremendous effect on the use of crossover traffic in SAC cases and on the entire SAC analysis and results – the forum to consider it would be in a notice-and-comment rulemaking where all potentially affected parties have an opportunity to provide input, not in an individual case adjudication.

principles is wholly unavailing. The first case SECI cites, *TMPA*, supports CSXT's position. In *TMPA*, the Board rejected complainant's proffered off-SARR re-routes because they failed to take into account possible "off-SARR operational issues . . . ; off-SARR cost issues . . . ; and whether the revenues from the re-routed traffic would be sufficient to cover [its] costs . . . including the off-SARR part." *TMPA I* at 595 (further establishing that off-SARR re-routes are allowed only if the complainant's SAC analysis "fully account[s] for the ramifications of requiring the residual carrier to alter its handling of the traffic."); *see id.* at 594-98 (applying the rule and "conclud[ing] that it [is] improper . . . for TMPA to assume a rerouting that would alter off-SARR handling of that [crossover] traffic."). The re-routing that the Board allowed in *TMPA* was internal, *on-SARR* re-routing that did not affect the residual incumbent's handling of that traffic. *See id.* at 594-98. Thus, *TMPA* fully supports CSXT's position that SECI may not re-route traffic from its actual route of movement on the residual CSXT without fully accounting for the effects of that altered routing.<sup>53</sup>

It is difficult to follow SECI's argument for an exception to the off-SARR re-route rules based upon *Duke/CSXT*, partly because that argument relies almost entirely on a quote from the complainant's supplemental evidence submission, not on the Board's decision in that case. *See* SECI Reb. at III-A-10. Moreover, the single sentence in which SECI does characterize the Board's decision is highly misleading. Although SECI claims that, in *Duke/CSXT*, the disputed "movements at issue eventually

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<sup>53</sup> SECI also cites, without any explanation, a footnote from the Board's *WFA II* decision. That footnote from the decision that enunciated the standard that CSXT asks the Board to apply reiterates that the Board established the requirements for off-SARR re-routes at least as early as *TMPA*: "The Board created a more stringent test for the second kind of rerouted traffic [off-SARR reroutes] because the SAC analysis does not account for all off-SARR operating and capacity costs that might flow from such rerouted traffic." *WFA II* at 11 n.16 (citing *TMPA*).

were included in the SARR traffic group used in the SAC analysis,” (*id.* at III-A-11), the truth is that of the 24 crossover movements that CSXT contested, the Board *rejected* 23 – all but one.<sup>54</sup>

Moreover, a portion of the *Duke/CSXT* re-route discussion that SECI does not mention lends further support to CSXT’s position that any traffic that the complainant diverts to a route it did not actually follow on the defendant’s network constitutes an “off-SARR re-route” subject to the Board’s additional requirements for such disfavored routings. As the Board explained in rejecting the complainant’s attempt to re-route traffic to a route other than “its customary routing” in the real world,<sup>55</sup>

it is not appropriate to divert traffic from other parts of the defendant carrier’s system to help defray costs for the portion of the system used by the complainant. Thus, where traffic does not already utilize lines replicated by the SARR, the traffic may not be included in the SAC analysis absent a compelling justification that the defendant carrier should itself be routing the traffic in this manner and that it is inefficient for it not to do so.

*Duke/CSXT* at 418. Significantly, the Board did not limit its rule to situations in which the defendant carrier had never routed a single car (or some of the traffic) over an alternative routing between the O-D pair in question. Rather, the Board’s ruling concerning re-routed crossover traffic established the general rule that where the incumbent did not move selected traffic over the route posited by the complainant, such a re-route is prohibited, unless the complainant presented: (i) a “compelling

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<sup>54</sup> Under the pre-ATC version of the off-SARR re-route rule at issue in that case, a complainant could establish that an off-SARR re-route presumptively did not impose additional operational difficulties or costs on the incumbent if it could show that the re-route was shorter than the incumbent’s actual route. *Duke/CSXT* at 420-22. One of the 24 reroutes considered by the Board was shorter than the defendant carrier, and the Board allowed the re-route. *See id.* at 421. The Board rejected all of the other contested re-routes, either because they resulted in a longer routing than the defendant’s customary route (like the routings CSXT corrected on Reply which SECI included in the third category discussed here), or because the defendant’s “customary routing generally [did] not come within 250 miles of the lines that would be replicated by the [SARR]” (like the re-routes SECI grouped in the first category discussed above). *Id.* As discussed, the Board subsequently revised the test and requirements for off-SARR re-routes in light of the ATC revenue allocation methodology adopted in *Major Issues* in 2006.

<sup>55</sup>The Board’s reference to the traffic’s “customary” routing (and elsewhere to its “predominant” and “usual” routing), and not to its “sole” or “only” routing further supports CSXT’s position that a defendant carrier’s occasional diversion of a minority of traffic to an alternative route does not permit a complainant to divert all traffic between an O-D pair to that alternative route.

justification” for that traffic diversion, and (ii) showed that it is inefficient for the carrier not to re-route that traffic from its actual route of movement. *See id.* (the rule later evolved to impose different burdens on the complainant for on-SARR and off-SARR re-routes). SECI makes no attempt to establish a compelling justification for its re-routes, or to show that it is inefficient for CSXT not to re-route the traffic in the manner hypothesized in SECI’s SAC case. Thus, to the extent the *Duke/CSXT* re-route ruling – issued before the adoption of ATC made revenue allocation for off-SARR re-routes nearly impossible – applies to this case, SECI failed to meet the tests applied in that case.

The only other authority SECI cites in discussing its proposed new rule that, if even a single car moved on a particular route the complainant should be entitled to shift all traffic between an O-D pair to that alternative routing, is *Duke/NS*.<sup>56</sup> It cites that decision for the uncontested proposition that off-SARR re-routes “require[] the incumbent to alter its handling of the traffic as compared to how it has handled it in actuality.” SECI Reb. at III-A-9.<sup>57</sup> CSXT’s routing corrections on Reply simply eliminated the off-SARR portions of cross-over reroutes that would otherwise require it [the “incumbent”] to alter its handling of that traffic from the way the data show CSXT actually handled it. The new rule SECI advocates, in contrast, would force the incumbent to alter the way it handles traffic

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<sup>56</sup> Not only would SECI’s proposed rule be inconsistent with SAC principles, ATC, and the Board’s existing rules, it could also discourage carriers from deviating from their customary route of movement, even though such deviations may be made to benefit the customer (*e.g.*, traffic may be diverted occasionally to provide more efficient service in the event of track maintenance, a derailment, or washout, temporary congestion, or other event affecting that traffic’s predominant, customary route of movement). The Board should avoid adoption of policies in the rate regulation context that undermine the advantages to shippers of carrier networks that allow alternative routings of traffic to mitigate the effects of extraordinary events and situations.

<sup>57</sup> CSXT’s Reply did not seek to change the routing of the minority of movements that traffic data showed had actually followed the alternative route posited by SECI. For traffic between an O-D pair that followed more than one route, CSXT accepted the multiple routings, making corrections only to those routings that SECI altered to create an off-SARR re-route. *See* CSXT Reply Exs. III-A-1 and III-A-2. Consistent with the approach followed by the Board in *TMPA*, CSXT’s Reply Evidence adjusted SFRR routings only to the extent necessary to eliminate off-SARR re-routing, allowing the SFRR to retain the portion of those movements that would not diverge from their actual route of movement on CSXT. *Compare* CSXT Reply Ex. III-A-1 *with* *TMPA I* at 598.

between a given O-D pair – in most instances significantly changing that traffic’s routing from its predominant route of movement – if, for any reason, any car moved on an alternative route.

Fourth, SECI selectively adopts some CSXT route corrections that result in a larger proportionate SFRR routing, and changes the route of substantial volumes between other O-D pairs to re-routes with higher proportionate SFRR length of haul than SECI proposed in its case-in-chief. See SECI Reb. Ex. III-A-3 at 1, 6-7.<sup>58</sup> SECI’s adoption of CSXT route adjustments on Rebuttal is a further tacit concession that – contrary to SECI’s rebuttal claim that its SARR “Does Not Include External Re-routes” – its opening evidence did include external re-routes. If SECI changed the routing of these movements for some reason other than responding to CSXT’s Reply challenge, such a change would be prohibited submission of new evidence on rebuttal. See *Duke v. CSXT*, STB Dkt. No. 42070, Decision (Mar. 25, 2003) (rejecting complainant’s introduction of new evidence on rebuttal to revise its case in chief); *Duke/NS* at 100-01.

In any event, the substantial additional volume of traffic between 23 O-D pairs for which SECI’s rebuttal filing increased the SFRR’s proportionate length of haul by using a *new* route not proposed in SECI’s opening nor in CSXT’s Reply. Compare SECI Reb. Ex. III-A-3 at 1, 6-7 with CSXT Reply Ex. III-A-1. This tactic should be rejected as a prohibited attempt to revise the complainant’s case-in-chief on rebuttal.<sup>59</sup> As the Board has admonished, it is the complainant’s obligation to submit its entire case-

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<sup>58</sup> SECI’s Rebuttal did not apply all of the corrections identified by CSXT, even for the O-D pairs for which CSXT determined the SARR’s proportionate share of the movement was greater than SECI had posited on opening. For those O-D pairs having multiple actual routings, SECI selected the routing with the longest proportion on the SFRR, and assumed all traffic between the O-D pair would shift to that routing. Here again, SECI’s approach would result in off-SARR re-routing without any attempt to satisfy the requirements for such re-routed traffic, thereby replacing its opening re-routes with other, equally impermissible off-SARR re-routings. CSXT’s approach on Reply, in contrast, routes all traffic over the route it actually followed, thereby eliminating impermissible re-routes.

<sup>59</sup> SECI offers no justification for its change to the routing of traffic between these 23 O-D pairs on rebuttal, beyond a vague reference to “additional event data” it claims CSXT produced on Reply. See SECI Reb. III-A-11-12. As CSXT has explained, it did not produce any new or additional traffic event

in-chief in its opening evidence. *See, e.g., Duke/NS* at 100. As to issues specifically challenged by the defendant carrier, the complainant's rebuttal submission may either; (i) demonstrate that its opening evidence is feasible and supported (under governing SAC rules); or (ii) adopt the evidence presented by the carrier. *Id.* at 101.<sup>60</sup> What a complainant may not do, however, is proffer new evidence on rebuttal that redesigns the SARR or significantly alters the assumptions of its case in chief. *Id.* Here, when CSXT challenged SECI's traffic routing, SECI could have either defended its position and retained the routing proffered on opening, or it could have adopted the corrected routing presented by CSXT on Reply. What SECI may not do is what it attempted to do here – change SARR traffic routings to routes that are materially different from those in its own case-in-chief and from the routings CSXT presented on Reply. *See id.; Duke v. CSXT*, STB Dkt. No. 42070 (March 25, 2003). Because SECI “has gone beyond simply seeking to support what it presented in its opening evidence or adopting evidence submitted by CSX,” its new traffic routing evidence is improper rebuttal and must be rejected. *See id.*

In sum, SECI has cited no case or authority remotely supporting its argument that Board rules allow it to re-route any and all traffic using off-SARR re-routes – without accounting for the effects on the operations and costs of the residual incumbent or on service to effected customers – so long as it can find a single car that traversed that route. *See SECI Reb.* at III-A-11. Indeed, the very cases upon which SECI relies directly support CSXT's position: off-SARR re-routes are impermissible in a SAC analysis unless the complainant fully accounts for all operating and capacity effects on the residual incumbent,

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data with its Reply evidence. *See supra* at 67; *see also Duke v. CSXT*, Decision at 4 n.5 (Mar. 25, 2003) (if party claims that errors and infirmities in its opening case in chief were due to shortage of time to prepare evidence or incomplete traffic data, proper course is to seek adjustment of schedule prior to filing its opening “to enable it to present a full and correct case,” not to revise case on rebuttal.).

<sup>60</sup> The Board has indicated that, in some circumstances, the complainant may offer to refine its opening evidence in response to issues raised by the defendant, by “fil[ing] a [separate] petition to supplement the evidentiary record.” *Id.* at 4. SECI did not file a petition to supplement the record, however, it simply materially altered the routing of SARR traffic, and hence SARR revenues and the SAC analysis, on rebuttal.

including proper allocation of revenues in accordance with the carrier's actual costs of providing the transportation service over the actual route of movement. *See, e.g. WFA II* at 14-15. Because SECI has not made the showing the Board requires for permissible off-SARR re-routes, the only routing evidence for 183 O-D pairs that satisfies governing rules is the evidence CSXT submitted on Reply.

In order to allow a SAC analysis without unsupported and impermissible external re-routes, CSXT used data it produced to SECI in discovery – and only that data – to correct the external (to the SARR) routing of that traffic. *See* CSXT Reply Ex. III-A-1; CSXT Reply WP “Coal\_Train\_Loaded\_Movements.xlsx.” The proper way to correct the proscribed re-routes while otherwise preserving SECI's traffic selection is set forth in CSXT's Reply evidence and workpapers.

## **B. Correction of SFRR Traffic Volumes**

SECI made a number of significant errors in generating its SARR traffic volume estimates – including the use of outdated coal volume forecasts to estimate SARR coal shipment volumes; overestimation of likely future issue traffic volumes; miscalculation of fuel surcharge revenues; and distortion and misapplication of volume forecasts for intermodal and general merchandise traffic – which together result in substantial overstatement of SFRR traffic volumes for every year of the DCF period (2009 – 2018). Most of these multiple, compounding errors are described in detail in CSXT's Reply evidence. *See* CSXT Reply at III-A-29-78. Below, CSXT briefly responds to new positions taken by SECI on rebuttal, and highlights a few other significant errors in SECI's case, and how those errors should be corrected.

### **1. Coal Traffic**

As CSXT demonstrated in its Reply, the methods SECI used to hypothesize SARR coal traffic volumes – including the use of manifestly erroneous coal traffic forecasts and the misapplication of those forecasts – generated a substantial overstatement of those volumes in 2009, the first year of SFRR operations, and exacerbated that overstatement in each subsequent year of the 10-year analysis period.

See CSXT Reply at III-A-29-62. On Rebuttal, SECI essentially agreed with CSXT that the January 2009 forecasts SECI used on opening were outdated and inaccurate, and proposed instead to apply the EIA's Annual Energy Outlook to estimate SARR coal traffic volumes for the entire analysis period, from 2009 through 2018. See SECI Reb at III-A-14-16, III-A-40-41.<sup>61</sup>

Thus, after SECI's rebuttal, the parties are in agreement that CSXT's January 2009 forecasts should not be used, and that the appropriate EIA AEO should be used to estimate SFRR coal traffic volumes for the last nine years of the SARR analysis period. At the same time, the parties continued to disagree significantly on three important elements of the determination of SFRR first-year coal volumes. First, the parties disagree as to whether CSXT's actual traffic data for 2009 should be used. Compare CSXT Reply at III-A-43-44, 51-54 with SECI Reb. at III-A-15-16. Second, the parties disagree as to whether 2009 coal volumes originating at mines from which the SFRR did not select traffic from 2008 CSXT traffic data could be added to SFRR volumes, and if so, how and to what extent such volumes should be shifted and re-allocated to 2008 origins. Compare CSXT Reply at III-A-39-53 with SECI Reb. at III-A-17-36. Third, SECI and CSXT disagree as to which EIA AEO forecast should be used to project traffic, the year-old April 2009 version, or the current 2010 AEO. See SECI Reb at III-A-40-41; CSXT Reply at III-A-56-57.

CSXT continues to believe its position on each of the foregoing remaining issues is correct and should prevail should the Board be required to decide between the parties' positions. However, in order to narrow the number and breadth of disputes between the parties, and to avoid burdening the Board with the potentially complex task of allocating traffic to and among numerous mine origins distributed across multiple regions, CSXT proposes a straightforward compromise resolution. CSXT would be

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<sup>61</sup> "SECI agrees that it would not be unreasonable to use the forecasts included in the April 2009 AEO Update in lieu of CSXT's January 2009 forecast to calculate 2009 coal volumes for the SFRR, and has done so in its Rebuttal restatement." SECI Reb. at III-A-15.

willing to accept, for purposes of this case only, the general approach proffered by SECI on rebuttal – applying the EIA AEO to project SFRR coal traffic volumes for 2009 through 2018 – on the condition that the AEO used to forecast those volumes is the 2010 AEO, issued on May 11, 2010.

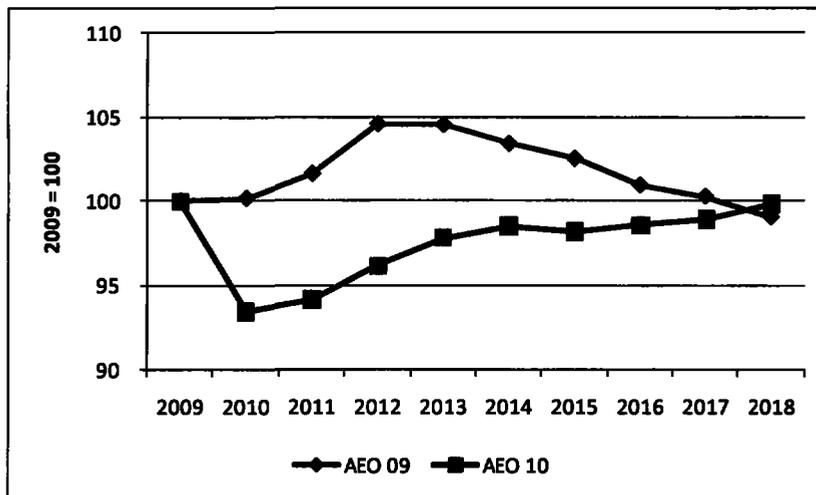
This simplified approach would obviate the need to resolve the complex factual, legal, and policy issues presented by the parties concerning origin shifting, and would be consistent with what the Board actually did in *CP&L*. While the parties strongly dispute why the Board took the action it did in *CP&L*, and whether that action should have broader implications beyond the specific context and facts of that case, there should be no dispute as to what the Board actually did: Faced with manifestly overstated coal volume forecasts, the Board applied the most recent AEO forecasts to index the actual full-year traffic (from which the complainant selected its SARR traffic) to the first year of SARR operations and the remainder of the analysis period. *See CP&L* at 250-51; *Duke/NS* at 867-69 (using most recent EIA annual forecast, issued after Board’s initial decision, to determine SARR coal traffic volumes). Here, CSXT proposes that the Board follow the same approach, by applying the EIA 2010 AEO to SECI’s 2008 coal traffic selection to generate SFRR traffic volumes.

The approach CSXT proposes would essentially adopt SECI’s rebuttal position on two of three disputed issues described above, by withdrawing CSXT’s request for the use of actual 2009 traffic volumes (thereby eliminating the accompanying questions concerning volume shifting for origins from which the SFRR did not take coal in 2008), and instead using EIA AEO data to index base year (2008) traffic volumes for 2009 through 2018. The only remaining question concerns CSXT’s pre-condition to this resolution: the use of the current 2010 AEO – rather than the April 2009 AEO that it replaces – to index the coal traffic volumes. This is not a new position offered by CSXT for the first time on Brief. In its Reply, well before EIA issued the 2010 AEO, CSXT strongly advocated the application of the 2010 AEO forecasts to determine SFRR coal traffic volumes. *See CSXT Reply III-A-55-56*. SECI’s

Rebuttal offered mild resistance to the use of the most current AEO, contending that the more recent, updated AEO 2010 forecast should be used only if it is significantly different from other forecasts in the record. See SECI Reb. at III-A-40-41. For several reasons, the Board should use the current (2010) AEO rather than the April 2009 Update.

First, as CSXT showed on Reply using the EIA’s 2010 Early Release, the change in EIA’s forecast from the April 2009 Update is significant, particularly for the years 2009 to 2013. See CSXT Reply at III-A-56; see EIA 2010 AEO.<sup>62</sup> The following chart illustrates the difference in relevant coal volume projections between the April 2009 AEO Update and the 2010 AEO.

**Table 3**  
**EIA AEO April 2009 and 2010 Forecasts for NAPP, CAPP and Eastern Interior Coal<sup>63</sup>**



<sup>62</sup> SECI tries to diminish the importance of the change, arguing that EIA projects a greater volume decline primarily in 2009 to 2013, and that EIA projects coal volumes will increase from those lower volumes thereafter. See SECI Reb. at III-A-41. Because the timing of different volume levels (and hence different SARR revenues) can have a significant effect on the SAC analysis and results, SECI’s assertion does not mean the use of current data will not affect the Board’s rate reasonableness analysis. Indeed, if use of the updated AEO data would not significantly affect the SAC analysis, it is unlikely that SECI would oppose use of those more current projections.

<sup>63</sup> For AEO 2009, see SECI Reb. WP “Coal Traffic Forecast Rebuttal.xlsx,” tab “EIA Forecasts.” For AEO 2010, see SECI Reb. WP “AEO 2010 Early Release.xls,” available at [http://www.eia.doe.gov/oiaf/aeo/aeoref\\_tab.html](http://www.eia.doe.gov/oiaf/aeo/aeoref_tab.html).

Therefore, use of the more recent, updated EIA forecasts – issued during the pendency of the case – will improve the accuracy of the analysis and results.

Second, absent some countervailing policy concern or objective, the Board should always prefer the use of more recent EIA forecasts, which reflect both actual knowledge and experience (here, for example, the EIA now knows actual coal production volumes for 2009, the first year of SFRR operations) and the agency’s most recent information and insights. SECI identifies no strong countervailing policy or interest. Third, in *CP&L*, upon which SECI places so much weight and which it claims “adopted a rule of general applicability,” the Board applied a revised AEO issued *after* the Board had issued its decision. *See Duke/NS Reconsideration* at 867-69 (consolidated decision applying to *CP&L* and two other cases). Here, CSXT’s position would not require the Board to re-open a final decision as it did in *CP&L*. Rather, CSXT simply asks that the Board use the most current version of the AEO – reflecting the EIA’s best, most recent coal volume estimates – as of the close of the record (*i.e.* the submission of closing briefs).<sup>64</sup>

Fourth, in calculating fuel surcharge revenues, SECI itself uses the 2010 AEO. *See* SECI Reb. WP “HDF Forecast from STEO and AEO.xlsx.” Not only does this show that SECI is cherry picking from among the 2009 and 2010 EIA data it finds most advantageous, it also shows that SECI was not prejudiced by the fact that the final official 2010 AEO issued a few days after SECI filed its Rebuttal. The EIA’s all-but-final AEO 2010 data and projections<sup>65</sup> were available well before the deadline for rebuttal filing, and SECI used those data where it suited SECI’s interests.

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<sup>64</sup> On Rebuttal, SECI expressed concern that CSXT’s comparison of the April 2009 AEO and the 2010 Early Release AEO did not separately address the the “Eastern Interior” EIA region, the origin of approximately 20 percent of SFRR coal traffic. The data and table in this Brief address that modest concern by applying the official 2010 AEO to project SFRR coal volumes from each origin region, including the “Eastern Interior” region.

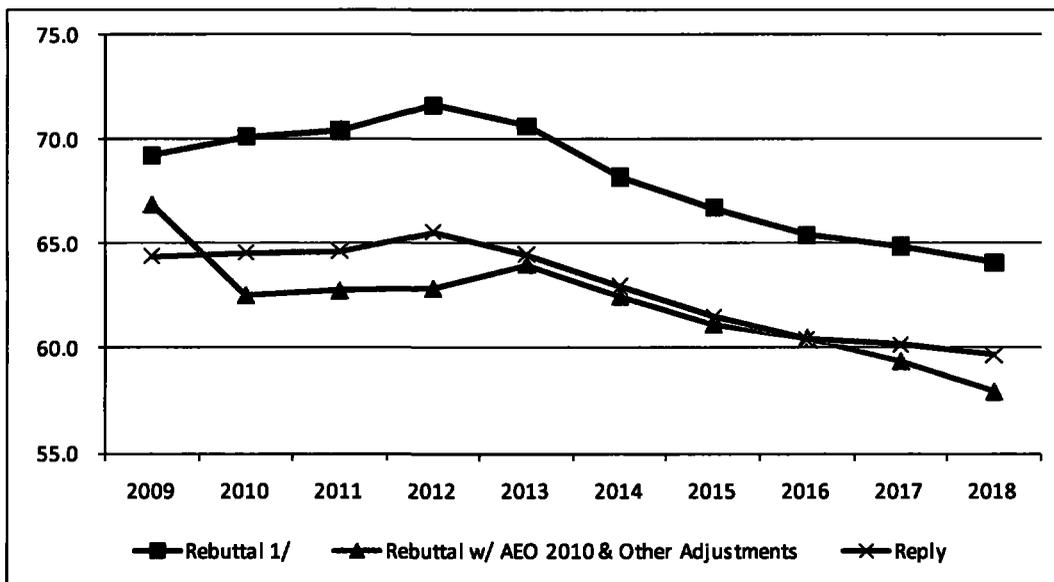
<sup>65</sup> The final AEO 2010 coal volume forecasts released in May 2010 were identical to those in the Early Release (cited in CSXT’s Reply at III-A-86).

The table and graph on the following page illustrate the effect on SFRR coal volumes of applying SECI's Rebuttal approach, but using the current 2010 AEO forecasts.

**Table 4**  
**SFRR Coal Tonnage Comparison (millions)**

		2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
1	Rebuttal <sup>66</sup>	69.2	70.1	70.4	71.7	70.7	68.2	66.7	65.4	64.9	64.1
2	Rebuttal using AEO 2010 and Adjustments <sup>67</sup>	66.9	62.5	62.7	62.8	64.0	62.5	61.1	60.5	59.4	57.9
3	Reply <sup>68</sup>	64.4	64.6	64.6	65.6	64.5	63.0	61.5	60.4	60.2	59.7

**SFRR Coal Tonnage Comparison (millions)**



Should the Board instead decide to apply the approach CSXT presented on Reply – allocating actual 2009 coal volumes to origins that SECI selected for the SFRR from 2008 traffic data – it should

<sup>66</sup> SECI Reb. WP “Coal Traffic Forecast Rebuttal.xlsx” (without contract minimum tonnage), corresponds with red line on the graph.

<sup>67</sup> SECI rebuttal evidence volumes, adjusted to: 1) apply AEO 2010 projections; 2) remove contract minimum volumes; and 3) eliminate improperly re-routed traffic. Green line on graph.

<sup>68</sup> CSXT Reply WP “Exhibits III-A-2 and III-A-3 Reply.xlsx.” Depicted in blue line on graph.

reject the changes to that evidence advocated by SECI on rebuttal.<sup>69</sup> SECI claimed on rebuttal that CSXT misapplied its allocation methodology in a manner that erroneously excluded additional traffic that moved over lines replicated by the SFRR in 2009 but did not move in 2008. With the possible exception of less than 200,000 tons, SECI's claim is demonstrably incorrect, and the product of its own computational and implementation errors. CSXT demonstrated in its Reply that 89 percent of actual 2009 coal traffic selected by SECI for the SFRR (or approximately 45 million tons) moved from the same mine origins in 2008, leaving only 11 percent of the 2009 coal volumes to be allocated (shifted) to mines from which SFRR coal traffic originated in 2008. *See* CSXT Reply at III-A-39-53. SECI claimed on rebuttal that CSXT's allocation erroneously excluded 4,686,539 tons of "new" 2009 traffic that did not move between 2008 O-D pairs. *See* SECI Reb. at III-A-33-38, Table III-A-1. Close review of SECI's own workpapers, however, demonstrate that the overwhelming majority of that purported new traffic was either not new or was properly not included in 2009 SFRR traffic volumes.

*First*, SECI's own Rebuttal workpapers show that more than half of the alleged new volumes are not new at all, but instead moved between O-D pairs that did move coal traffic in 2008.<sup>70</sup> SECI's mislabeling of 2.45 million tons of existing (2008) traffic as new (2009) traffic appears to be the result of a spreadsheet matching or calculation error. *Second*, SECI's own workpapers further demonstrate that all but 191,542 of the remaining tons that SECI claims moved to "New destinations" in 2009 were actually shipments to destinations to which CSXT moved coal in 2008, but which SECI did not select for its SARR traffic group.<sup>71</sup> *Finally*, the remainder (after eliminating 202,000 tons between O-D pairs

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<sup>69</sup> SECI has abandoned its opening approach of attempting to apply the erroneous January 2009 CSXT forecast (*see* SECI Reb. III-A-15), so the remaining options for SARR coal traffic volumes are CSXT's Reply approach, or SECI's general rebuttal approach applying the April 2009 AEO or the 2010 AEO.

<sup>70</sup> *Compare* SECI worksheets "New Destinations (condensed)" and "Existing Destinations" with "Sheet6" in SECI Reb. WP "CSXT 2009 Coal Actuals (Corrected).xls."

<sup>71</sup> *Compare* SECI worksheet "New Destinations (condensed)" with "Sheet6" in SECI Reb. WP "CSXT 2009 Coal Actuals (Corrected).xls."

that moved traffic in 2008) of the 874,256 tons that SECI claims should have been allocated to the SFRR as “New movements to 2008 destinations” tons were properly excluded from the SARR for one of two reasons: (i) because they moved on network/destination combinations (e.g., C&O WV to North Wateree) that SECI excluded from its SARR network; or (ii) because the new origins are in entirely different EIA regions (e.g., NAPP to Wheelwright) from those SECI selected for the SFRR, which would not be included in a broad EIA region-wide growth rate approach.<sup>72</sup> Thus, if the Board adopts the CSXT Reply approach for allocating 2009 actual volumes to SFRR-served O-D pairs, it should reject SECI’s suggested changes to CSXT Reply coal volumes for all but 191,542 tons (approximately four-tenths of one percent (0.4 %) of SFRR coal traffic).

## 2. Intermodal Traffic

To develop 2009 SFRR intermodal traffic volumes, Seminole used CSX Intermodal’s (“CSXI”) forecast for movements between origin-destination pairs that Seminole selected from CSXT’s 2008 shipment records for the SFRR. Rather than removing 2008 traffic that the CSXI forecast projected would cease to move in 2009, SECI instead assumed that lost traffic would continue to move at reduced volumes. Seminole’s approach overstates SFRR intermodal traffic in 2009 and future years. First, by applying CSXI’s forecast and then supplementing the SARR traffic with 2008 traffic that is not in the CSXI forecast, Seminole overstated CSXI traffic that would move on the SFRR. The CSXI forecast includes all of the volumes that are projected to move, and there is no basis for adding traffic that moved in a prior year, but which CSXI projects will not move in the forecast year.<sup>73</sup>

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<sup>72</sup> Compare worksheet “Existing Destinations” in SECI Reb. WP “CSXT 2009 Coal Actuals (Corrected).xls” with CSXT Reply WP “Exhibits III-A-2 and III-A-3 Reply.xlsx.”

<sup>73</sup> SECI claims that its approach – assuming that SARR would retain 50 percent of traffic volumes that CSXI has determined would disappear altogether in 2009 – implements the approach the Board followed in CP&L. See SECI Reb. at III-A-46. This claim cannot withstand scrutiny. What the Board did in CP&L was apply an EIA forecast growth rate to actual base year coal traffic volumes that moved over the lines of the SARR in order to estimate future SARR coal traffic volumes. See CP&L at 250-51.

SECI's approach would undermine the logic and integrity of the forecast and render it unreliable by adding projected traffic growth without taking into account projected offsets to that growth as a result of lost or reduced traffic between the same origin-destination pairs. Intermodal traffic patterns, volumes, and commodity mix are very dynamic, and they shift substantially over time. Any meaningful projection of intermodal traffic volumes must appropriately take into account both traffic volume growth and traffic volume reductions, and their offsetting effects on overall traffic volume.<sup>74</sup> SECI's skewed approach seeks to take advantage of traffic growth while ignoring projected traffic losses, and it should be rejected out of hand.<sup>75</sup>

SECI also reprises its contention that it should be allowed to engage in external re-routing of traffic (here intermodal traffic) without meeting the Board's requirements for such traffic, so long as it can identify at least one car (or container) that followed the alternative routing over which it seeks to re-

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What SECI seeks to do here, in contrast, is to dismantle the CSXI forecast it purports to apply and generate its own new projections that are untethered to that forecast, by arbitrarily assuming that 50 percent of traffic that CSXI forecast it would lose would instead continue to move over lines of the SFRR. If it were feasible or acceptable to apply an arbitrary percentage to a portion of base year traffic in order to estimate future SARR traffic volumes accurately, there would be no reason to use actual forecasts at all.

<sup>74</sup> SECI asserts on rebuttal that it did not add new intermodal traffic from the CSXI forecast. SECI Reb. III-A-45-46. This assertion is misleading. SECI did include traffic growth between O-D pairs it selected for the SFRR from CSXT's 2008 traffic data. What it chose not to include was traffic between O-D pairs that did not move traffic in 2008. SECI's discretionary decision not to attempt to account for new intermodal traffic volumes that CSXI forecast would move between new O-D pairs provides no basis for its manipulation of the CSXI forecast by reducing 2008 volumes by an arbitrary and unsupported 50 percent per year. SECI offers no reason or support for its use of 50 percent, as opposed to any other percentage.

<sup>75</sup> In its Opening evidence, SECI did not even follow the (erroneous) approach its narrative claimed to have applied. Rather than reducing the volume of 2008 intermodal traffic by 50 percent each year for moves that do not appear in the CSX Forecast, SECI applied the reduction only once, to convert 2008 volumes to 2009 volumes (keeping those hypothetical, non-forecast volumes constant at SECI's 2009 level for the remaining nine years of the analysis period). See CSXT Reply at III-A-64. On rebuttal, SECI acknowledged and corrected this error. See SECI Reb. at III-A-46-47. This correction, however, merely implements the erroneous approach SECI claimed to have applied in its case-in-chief. It does not address the fundamental error and overstatement of SFRR traffic volumes that is inherent in SECI's distortion of CSXI's forecast.

direct the traffic. *See* SECI Reb. at III-A-48. As CSXT demonstrated in refuting SECI's same argument concerning external re-routing of coal traffic, the new rule SECI advocates is not supported by Board precedent, would be inconsistent with basic SAC principles and methodology, and precludes coherent ATC revenue allocation.<sup>76</sup> *See supra* at 68-72. SECI offers no new argument in support of its external re-routing of significant volumes of intermodal traffic. The Board should reject SECI's attempted end-run around established requirements for external re-routes, and follow the corrected approach presented by CSXT on Reply. *See* CSXT Reply at III-A-65-68.

The Board should adopt the foregoing and other corrections of SECI intermodal traffic volume errors, as explained and implemented in CSXT's Reply. *See id.*, III-A-64-68.

### **3. General Freight Traffic**

CSXT accepted the general approach for estimating SARR general freight volumes that SECI described in its opening evidence narrative. However, SECI's implementation of its stated approach made significant errors, primarily consisting of several material misapplications of CSXT traffic forecasts. In order accurately to implement the approach SECI proposed, it is essential to correct those errors and the resulting overstatement of SFRR general freight traffic volumes.

First, Seminole significantly inflated general-freight traffic volumes above levels projected in CSXT's 2009 forecast, by assuming that 2008 traffic that is excluded from that forecast would nonetheless continue to move over the SFRR in 2009 and beyond. Like the CSXI intermodal traffic projections, however, the CSXT merchandise traffic forecast accounts for *all* projected traffic volume. Adding traffic that CSXT has determined will not move in 2009 would substantially overstate volumes in 2009 and every year thereafter.

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<sup>76</sup> SECI repeats – without any citation to STB or ICC authority – its conclusory assertion that the new rule for external re-routes it advocates for this case “has always been recognized.” *See* SECI Reb. at III-A-48. SECI's assertion is incorrect, and no amount of repetition of that erroneous claim could make it correct.

On rebuttal, SECI attempted to excuse its retention of traffic volumes that CSXT has determined would no longer move, by asserting that the CSXT forecast did not contain sufficient routing information to identify all of the new traffic that might move over lines replicated by the SFRR. As CSXT has explained, the nature and complexity of carload merchandise traffic and operations make it inherently difficult to accurately project routings of new traffic. This difficulty and inherent imprecision is one of the several reasons that prior SAC case complainants have selected primarily coal and other bulk traffic moving in unit trains for their SARR. SECI's extraordinary decision to use merchandise carload traffic for a large proportion of its SARR traffic necessarily carries with it that traffic's greater complexity and concomitant difficulties for its SAC analysis.<sup>77</sup> See CSXT Reply at III-A-68-70. Rather than attempting to account for the complexity that is an inevitable consequence of its traffic selection, SECI seeks to assume it away – just as it assumes away the need for an actual operating plan that adequately serves the selected traffic and customers – and thereby to take advantage of the benefits of such traffic without adequately addressing the accompanying complexity, costs, and challenges.

With respect to merchandise traffic volumes, SECI's "simplifying" assumption would include in SFRR first-year (2009) volumes both the growth that CSXT projected for traffic between O-D pairs served by the SFRR, and 86 percent of the traffic that the same CSXT forecast projected *would no longer move* in 2009. See CSXT Reply at III-A-70-71. In support of this distortion of the CSXT forecast, SECI says it assumed that the (i) effective 14 percent decline projected for that merchandise

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<sup>77</sup> Having introduced this substantial additional complexity to the analysis, SECI should not be heard to complain that such self-inflicted complexity makes it more difficult for SECI to present sufficient evidence on elements of its case-in-chief on which it bears the burden of proof. If SECI is correct when it asserts on rebuttal that "*it is impossible to show with specificity which new movements would (or would not) traverse lines replicated by the SFRR*" then SECI has failed to carry its burden of proof with respect to SARR volumes, an essential element of its SAC case. SECI Reb. at III-A-53 (emphasis added). In that event, what SECI is effectively conceding is that, by virtue of the traffic it alone decided to select for the SARR, it cannot establish or support a *prima facie* case. If the Board does not adopt CSXT's merchandise traffic volume corrections, the only alternative would be to dismiss the case for failure of proof.

traffic that would continue to move on the CSXT system would also apply to (ii) the lost traffic that CSXT forecast would cease to move on the CSXT system. *See id.*; SECI Open. at III-A-13. This makes no sense. The percentage decline in the volume of traffic that continues to move on the CSXT system has no bearing on the traffic that ceases to move entirely. By definition, the decline in the volume of the latter category of traffic is one hundred percent.

Moreover, SECI offers no rationale whatsoever for its unsupported further assumption that, in the remaining nine years of the analysis period, the lost traffic would decline by 50 percent. Thus, even if the Board somehow were to accept SECI's argument that it should be permitted to assume additional forecast volumes would travel over lines replicated by the SFRR, the approach SECI proposes to use to estimate such assumed volumes is arbitrary and wholly unreliable. Even under SECI's (flawed) theory, there is no more reason to adjust traffic volumes by 50 percent than by any other randomly selected percentage. The Board should adopt the correction presented in CSXT's Reply, which eliminates SECI's general freight traffic volume overstatement by removing the extra-forecast (2008) traffic from the 2009 SFRR traffic.

Second, Seminole's opening evidence doubled-counted forecast volumes of CSXT interline traffic that could be interchanged at more than one location, by attributing the full forecast volume between an O-D pair to each of two (or more) different routings. *See CSXT Reply at III-A-71-72* (providing illustrative example). SECI conceded on rebuttal that it had double-counted such traffic volumes. *See SECI Reb. at III-A-55*. The Board should adopt the correction presented in CSXT's Reply evidence, which eliminated the double counting and overstatement of SFRR general freight volumes. *See CSXT Reply III-A-71-72*.

Third, on rebuttal SECI agreed with CSXT that movements of synthetic gypsum (calcium sulfate hydrate) from Stilesboro to Bridgeport will not continue to grow from 2013 to 2018 at the same rapid

rate they are projected to grow in the preceding years. *See* CSXT Reply at III-A-72-74; SECI Reb. at III-A-55-56. CSXT's Reply corrected SECI's gross overstatement of SFRR volumes by assuming, generously, that calcium sulfate volumes originating at Stilesboro will reach 800,000 tons in 2013, and remain constant at those levels for the five remaining years of the analysis period. *See* CSXT Reply III-A-74, Exs. III-A-2 and III-A-3.

Finally, the Board should adjust downward CSXT's erroneous January 2009 forecast for automobile and metals shipment volumes, to reflect actual market and economic conditions and more current forecasts. CSXT, and the economic forecasts upon which it relied in late 2008 and January 2009, very substantially underestimated the acute production and shipment declines in the automotive and metals sectors.<sup>78</sup> Although CSXT's January 2009 forecast overestimated volumes for nearly every category of merchandise traffic, on Reply it followed a conservative approach by adjusting projected volumes for just the two types of traffic that experienced the largest declines in 2009.

In order to reduce the overstatement embedded in its outdated forecast for primary metals and automotive traffic, CSXT compared industrial and automotive production projected in January 2009 (when CSXT issued the forecasts used by SECI) with more current projections. CSXT then adjusted projected SFRR shipments of primary metals and automobiles by the percentage difference between the January and October 2009 forecasts. The Board should adopt the resulting SFRR merchandise traffic

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<sup>78</sup> In January 2009 Global Insight forecast that light vehicle production would be 9.6 million units in 2009. In October 2009, Global Insight revised its forecast in light of market conditions, and projected that light vehicle production instead would be 8.61 million units, or 10.3 percent lower than its expectations as of January. Thus, SFRR automotive traffic volume estimates that relied upon the CSXT January 2009 forecast (which in turn relied on contemporaneous Global Insight forecasts) would incorporate overly optimistic projections, which time has shown to be erroneous. In the first three quarters of 2009 alone, CSXT's publicly reported data showed that its year-over-year decline of shipments in its industrial and automotive business segments exceeded forty (40) percent, accounting for nearly one-half of CSXT's entire decline in general freight volumes. *See* CSXT Reply at III-A-75. Global Insight now projects that industrial production will not reach January 2009 forecast levels in any of the next six years (*i.e.*, through 2015), and that automotive production will attain that level only once during that period.

volume levels and projections CSXT proffered on Reply as a more realistic – though still significantly overstated – estimate of volume levels the SFRR might realistically aspire to achieve under economic conditions and projections more closely approximating those of late 2009 and 2010. *See* CSXT Reply at III-A-73-78.<sup>79</sup>

### **C. SFRR Revenues**

#### **1. Coal Traffic Revenues**

CSXT largely accepted SECI's general approach to estimating coal traffic rates and revenues, with several exceptions and corrections, the most significant of which are summarized below. First, the Board should adopt CSXT's primary adjustment to SECI's coal rates submission, by substituting CSXT's actual 2009 rates for the forecast rates used by SECI. This adjustment enhances the accuracy of revenue projections without affecting other traffic volume and revenue parameters.

Second, the Board should apply CSXT's correction of SECI's overstatement of the effective rates for its own traffic. SECI overstated those rates by failing to take into account the parties' agreement and practice of "banking" index reductions that would reduce the rate to a level below the contractual floor, and crediting those reductions against future index increases. *See* CSXT Reply at III-A-80-82. Because SECI agreed on rebuttal that it was appropriate to adjust issue traffic rates to reflect

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<sup>79</sup> SECI's arguments against this adjustment are unavailing. Its complaint that CSXT did not adjust all merchandise traffic projections undermines its contention that SFRR merchandise traffic volumes should be higher. Because the January 2009 forecast overstated volume for most merchandise traffic, adjusting those traffic volumes to reflect actual experience and updated projections would reduce SFRR merchandise traffic volumes even further. SECI's claim that one source reports a substantial increase in overall automotive and metals carloads for a single quarter (1Q 2010) does not indicate the source of the comparison year volumes. If the data on which SECI relies is a year-over-year comparison of first quarter 2010 actual volumes with first quarter 2009 actual volumes, the reported change would be from a lower base volume, which reflects the very phenomenon for which CSXT seeks to adjust: most forecasts issued in January 2009 substantially overestimated actual production and shipment volumes. SECI offers no actual evidence or analysis to challenge CSXT's proffered volumes for two categories of merchandise traffic.

this banking, the Board should make this adjustment and reduce issue traffic revenue by the amounts set forth in CSXT's Reply. *See id.* at III-A-82 & Table III-A-14; SECI Reb. at III-A-63-64.

## 2. Intermodal Traffic Revenues

SECI's intermodal traffic rate evidence contained three main types of errors. First, SECI erred in deriving its opening estimate of average intermodal rate growth from 2008 (the "base year" in which it selected SARR traffic) to 2009, by comparing average *net* CSXI revenue per unit in 2008 (net of payments to foreign carriers that serve as interline partners) and average *total* revenue per unit (including both CSXI revenues and foreign carrier revenues) projected for 2009. *See* CSXT Reply at III-A-85-86. On rebuttal, SECI conceded that its approach overstated intermodal rates, and that the type of correction CSXT proposed was appropriate. *See* SECI Reb. at III-A-65. However, SECI contends for the first time on rebuttal that an element of its approach that CSXT did not challenge – application of the average change between 2008 revenues and forecast 2009 revenues for a category of intermodal traffic – should be changed in favor of a third approach. *See id.* at III-A-66. Because this new alternative approach neither adopts CSXT's Reply approach nor adheres to SECI's Opening approach, it is an impermissible attempt to change SECI's case-in-chief by introducing new evidence on rebuttal. *See Duke/NS* at 100-01 (absent a petition to submit supplemental evidence, complainant's options in responding to defendant's reply challenge are limited to showing that its opening evidence was feasible and supported, or adopting defendant railroad's evidence). Accordingly, the Board should adopt CSXT's Reply approach.

Second, SECI unreasonably assumed that over 90 percent of the CSX rate authorities governing SFRR intermodal traffic – rate authorities that SECI did not review – would require the customer to pay the default published fuel surcharge. This assumption is arbitrary, and SECI has offered no evidentiary support for the assumption. CSXT presented a reasonable alternative approach for estimating fuel surcharges for the 429 rate authorities that SECI did not review: applying a weighted average of the fuel

surcharges provided by the 40 purportedly “representative” rate authorities that SECI *did* review. *See* CSXT Reply at III-A-86-89.<sup>80</sup>

Third, SECI further inflated intermodal fuel surcharge revenues by projecting that all customers would pay the published default fuel surcharge rate upon the expiration of their existing intermodal contracts. CSXT explained that it was much more likely that, upon expiration of their existing contracts, intermodal customers would negotiate new agreements providing for similar fuel surcharges to those they had paid under the prior contract. *See id.* at III-A-90-91. CSXT adjusted fuel surcharge projections to reflect this more reasonable assumption. *See id.* SECI offers no supported or persuasive response on rebuttal, and the Board should adopt CSXT’s approach.

### 3. General Freight Traffic Revenues

CSXT generally did not object to SECI’s stated approach and methodology for estimating general freight traffic rates, which SECI described in its narrative evidence. CSXT does object to a number of components of SECI’s attempted implementation of the approach it claimed to have followed, including erroneous calculations and incorrect, unsupported, and unreasonable assumptions. CSXT’s Reply evidence corrected SECI’s errors, and the Board should adopt those corrections. *See* CSXT Reply III-A-91-94.

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<sup>80</sup> SECI claimed in its case-in-chief that the rate authorities it selected for comparison constituted a “representative sample.” SECI Open. at III-A-30 n.34. SECI cannot simultaneously maintain that its selected sample is representative with respect to fuel surcharges, and that the published default fuel surcharge – which is { } the selected sample – should apply to estimate fuel surcharge levels for other SFRR intermodal traffic. *See* CSXT Reply at III-A-86-88. Apparently recognizing this flaw, on rebuttal SECI attempted to abandon its opening position that it had selected a representative sample of intermodal contracts for review. *See* SECI Reb. at III-A-67. This is an impermissible change of position on rebuttal, as CSXT did not challenge SECI’s assertion in its case-in-chief that the contracts SECI reviewed constituted a “representative sample” of rate authorities for review. *See* CSXT Reply at III-A-86 (CSXT did not participate in SECI’s selection of sample, and thus cannot take position on whether sample was representative or not).

**4. SECI's Erroneous Calculation of Projected Fuel Prices on Rebuttal Results in an Overstatement of SFRR Fuel Surcharge Revenues.**

On rebuttal, SECI miscalculated fuel surcharge revenues through an erroneous application of two separate EIA forecasts, the April 2010 Short Term Energy Outlook ("STEO") and the 2010 Annual Energy Outlook ("AEO"). *See* SECI Reb. WP "HDF Forecast from STEO and AEO.xlsx." This error was apparently unintentional, as SECI's Rebuttal narrative did not mention a methodological change from the way it projected fuel prices on Opening.<sup>81</sup> As a result of this error, SECI's calculations substantially increase projected HDF prices, which in turn significantly overstate fuel surcharge revenues for the SFRR.

On opening, SECI used the July 2009 Short Term Energy Outlook ("STEO") prices to project HDF prices for 2009 and 2010, and the April 2009 AEO forecast prices to project HDF prices for the remainder of the analysis period. *See, e.g.*, SECI Open. at III-A-29. On rebuttal – tacitly contradicting its opposition to the use of the 2010 AEO to project SFRR traffic volumes – SECI used the April 2010 STEO to project HDF prices for 2009 through 2011, and the 2010 AEO to estimate HDF prices for the remainder of the analysis period.<sup>82</sup> *See* SECI Reb. WP at "HDF Forecast from STEO and AEO.xlsx."

For years 2009 through 2011, SECI used the actual HDF prices forecast by the April 2010 STEO. When SECI shifted to the 2010 AEO to project HDF prices from 2012 through 2018, however,

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<sup>81</sup> As explained below, SECI's rebuttal workpapers contain a significant error in the method used to project future highway diesel fuel ("HDF") prices. *See* SECI Reb. WP "HDF Forecast from STEO and AEO.xlsx." It appears that this was a workpaper error, and not an intentional change from the approach SECI used to project fuel prices in its case-in-chief. If, however, SECI intended to change its method of projecting fuel prices on rebuttal, then the new approach is both erroneous and a prohibited change of methodology on rebuttal. Because CSXT did not challenge SECI's opening methodology for projecting future fuel prices, a change in that methodology would be a prohibited attempt to change SECI's case-in-chief by presenting new evidence on rebuttal. *See, e.g.*, *Duke/NS* at 100 (permissible rebuttal is limited to those matters challenged by the railroad); *SAC Procedures*, 5 S.T.B. at 445 (shipper must present its full case-in-chief in its opening evidence in SAC case; new evidence may not be presented on rebuttal).

<sup>82</sup> For fuel surcharges based on the West Texas Intermediate ("WTI") price, SECI did not use the 2010 AEO to update WTI prices. *See* SECI Reb. WP "Coal Fuel Surcharge Forecast Rebuttal.xlsx."

its workpapers ceased to use EIA’s forecast HDF prices. Instead, SECI erroneously applied an implied price *growth rate* (derived from the 2010 AEO) to the STEO’s projected HDF price for 2011 in order to generate its projected HDF price for 2012. Because the STEO and the AEO are separate, independent models that are designed for different purposes and implemented differently,<sup>83</sup> SECI’s application of a *growth rate* it derived from the *long term* model (AEO) to the *absolute price* projected by the separate and distinct *short term* model (STEO) is analytically unsound, and generates materially overstated projected HDF prices for 2012 through 2018. The independence of the two models is illustrated by the fact that EIA’s recently released 2010 HDF price forecasts were unchanged from those projected in the December 2009 “Early Release” AEO, despite STEO forecast increases in those prices.

The following table shows the corrected HDF prices using SECI’s opening methodology and the projections from the 2010 AEO and STEO.

**Table 5<sup>84</sup>**  
**Projected HDF Prices (Nominal cents per gallon)**

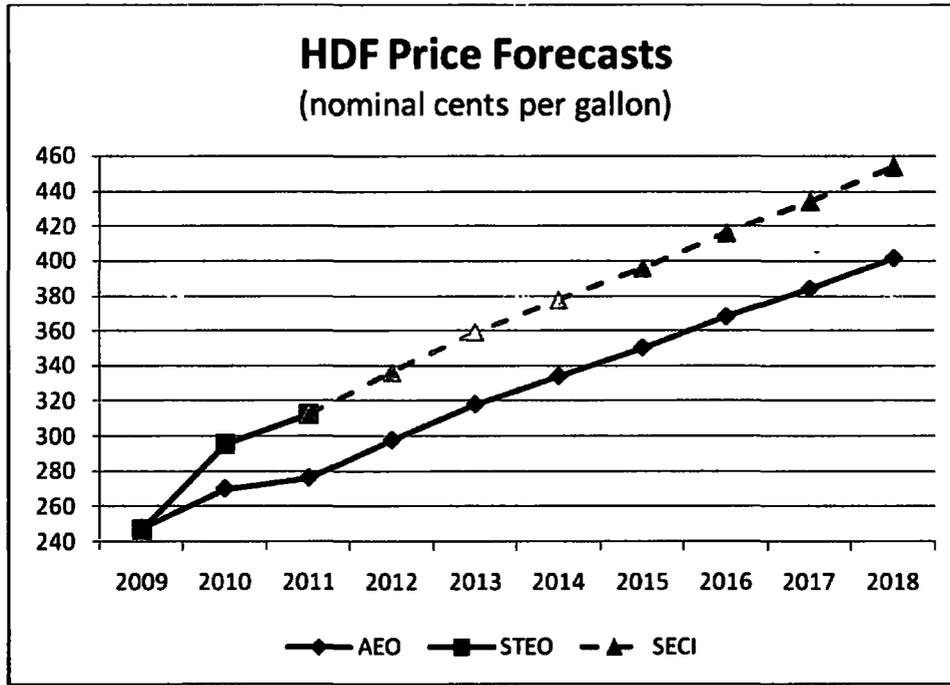
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
<b>Opening HDF</b>	246	280	246	275	312	339	362	384	407	428
<b>Rebuttal HDF</b>	246	295	312	336	359	378	396	416	434	454
<b>Corrected HDF</b>	246	295	312	298	318	334	350	368	384	402

The significance of this erroneous calculation is further illustrated by the following graph, which plots projected HDF prices under the April 2010 STEO, under the 2010 AEO, and under SECI’s erroneous hybrid methodology. As the graph demonstrates, SECI’s error results in projected HDF

<sup>83</sup> The AEO uses the National Energy Modeling System (NEMS), a computer-based, energy-economy modeling system focused on the long term (here, through 2030). See <http://www.eia.doe.gov/oiaf/aeo/overview/index.html>. The STEO uses the Short-Term Integrated Forecasting (STIFS) model, which is based upon hundreds of other interrelated regression equations. See <http://www.eia.doe.gov/emeu/steo/pub/document/overview.pdf>.

<sup>84</sup> For Table 5 and the accompanying graph, see SECI Open. WP “Coal Fuel Surcharge Forecast.xlsx,” tab “EIA HDF Price Forecast” for SECI’s Opening projection and see SECI Reb. WP “HDF Forecast from STEO and AEO.xlsx” for SECI’s Rebuttal projection.

prices that are significantly higher than those forecast by the AEO, which is the only EIA model that projects HDF prices for the years 2012 through 2018.



To correct this error, the Board should apply SECI’s opening method (adopted by CSXT on Reply) for projecting future HDF prices, using the April 2010 STEO projected prices for 2009-2011, and the 2010 AEO projected prices for 2012 through 2018 (illustrated in the bottom “Corrected” row of the Projected HDF Prices chart above).

**5. Revenue Divisions: Cross-Over Traffic**

SECI made two types of errors in deriving revenue divisions for cross-over traffic. Because cross-over traffic accounts for 92 percent of SFRR traffic volume, these errors are significant. If the Board does not dismiss this case for serial failures of proof, correction of SECI’s revenue allocation errors is essential to a sound SAC analysis that complies with the Board’s rules. In addition, CSXT also brings to the Board’s attention a calculation error in its Reply workpapers, and requests that the Board correct that error.

The first major adjustment is necessary to adjust ATC revenue allocations to reflect the correction of SECI's numerous unsupported external re-routes. *See supra* at 64-75..<sup>85</sup> *See* CSXT Reply at III-A-97. The second category of errors all relate to erroneous calculations and applications of fixed costs elements of the ATC methodology. *See id.* at III-A-98 to 100. With the exception discussed below, the Board should adopt the corrections CSXT proffered in its Reply.

In reviewing SECI's Rebuttal workpapers, CSXT determined that its own Reply ATC workpaper contained erroneous calculations. Specifically, CSXT incorrectly calculated the fixed costs for the origin residual portion of the move for the SFRR cross-over coal and general freight traffic. *See* CSXT Reply WP "ATC summary Reply.xlsx," tab "Sheet1," column AH. CSXT's formula in that column of the workpaper erroneously failed to include the fixed costs for each off-SARR segment from other CSXT Reply workpapers "OffSARRCoal Reply.xls" and "OffSARR GF\_Origin Reply.xls." Although, as discussed above, SECI continues to rely upon improper re-routes in its Rebuttal filing, its ATC calculations use the correct formula for off-SARR fixed costs. Therefore, if the Board does not disallow those movements altogether, it should use SECI's rebuttal formula (but not its numerical inputs) to calculate the off-SARR fixed costs component of the ATC crossover traffic revenue allocation. With that exception, the Board should adopt the corrections advocated by CSXT and adjust ATC revenue allocations accordingly.

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<sup>85</sup> If the Board disallows all such traffic for failure to submit evidence required to support external re-routes – which would be warranted – there would be no revenue to be allocated from those disallowed movements. Elimination of that traffic would result in cascading, fundamental errors in the areas of SARR configuration, operating plan and expenses, and capital investment. Alone, the myriad difficulties and complexities of remedying these errors without an entirely new SAC presentation and analysis would argue for dismissal of the case for failure of proof. When considered in combination with SECI's several other fundamental failures of proof, the argument for dismissal is compelling.

#### **IV. THE BOARD SHOULD ADOPT CSXT'S OPERATING COST EVIDENCE.**

##### **A. SECI's Operating Expense Estimates Are Riddled With Errors And Invalid Assumptions.**

The operating statistics (including elapsed train running times, cycle times, locomotive hours, car hours and train crew counts) underlying SECI's operating expense estimates are based upon the output of SECI's ill-conceived RTC simulation. SECI Reb. III-C-57; SECI Open. III-C-48. As CSXT demonstrates in Section II above, SECI's operating plan and RTC simulation are fatally flawed and should be rejected in their entirety. As the Board has held in previous cases, operating expense calculations based upon an operating plan that is rejected by the Board should likewise be disregarded. *See, e.g., Duke/CSXT* at 431 ("the SAC analysis here necessarily uses CSXT's operating assumptions for the [SFRR] to determine such matters as the number of locomotives, freight cars, and train crew personnel that would be needed"); *Xcel* at 614 (Board uses BNSF assumptions in determining operating expenses where its operating plan is deemed best record evidence). In this case, the Board should likewise adopt CSXT's operating expense estimates, and reject those based upon SECI's fatally flawed operating plan.

The bizarre (and unprecedented) methodologies employed by SECI in developing its operating plan and operating expense estimates nevertheless warrant discussion here, particularly given the likelihood that Complainants in future SAC cases may choose to posit SARRs that handle significant volumes of merchandise and intermodal traffic.

##### **1. SECI Illogically Takes A "Merchandise Line-Haul Credit" For Empty Cars.**

Rather than bothering to determine the specific origin, destination and customer service requirements of those merchandise cars that were not part of the SFRR's selected traffic group – or removing those cars altogether from its operating plan – SECI simply classified them as "non-revenue" traffic. It then awarded the SFRR what SECI characterizes as a "manifest line-haul credit" – essentially

a reduction in the SFRR's operating expenses – for each “non-revenue” car or intermodal unit. The amount of the “merchandise line-haul credit” was derived from a voluntary intra-company agreement between CSXT and its affiliate, CSXI.<sup>86</sup> Even if this novel construct were otherwise valid – and it is not – SECI's calculation of the “merchandise line haul credit” is vastly overstated.

As CSXT's Reply Evidence showed, fully 61 percent of the cars classified by SECI as “non-revenue loads” were, in fact, empty cars. See CSXT Reply at III-C-45. Nevertheless, SECI maintains that the SFRR is entitled to a “merchandise line haul credit” for each of those empty cars. SECI Reb. at III-D-142-144. SECI's position is nonsensical, for several reasons.

First, many (if not most) of the empty cars classified by SECI as “non-revenue” movements are empty cars associated with SFRR's own revenue traffic group. SECI posits that the SFRR's 2018 traffic volume would include 555,177 loaded general freight cars. SECI Reb. Table III-C-1 (revising SECI Open. Table III-C-1). These loaded movements would necessarily generate corresponding empty movements (as cars were placed for loading by SFRR customers or return moves of loaded overhead shipments in which SFRR was a participating carrier). SECI's “manifest line-haul credit” calculation assumes that the SFRR would bill CSXT for all empty cars that move across the SFRR network, including those for which the SFRR (rather than CSXT) would earn the line-haul revenue!

SECI's attempt to defend this assumption on the ground that “it is the prerogative of the complaining shipper to select what traffic to include in its SAC presentation” strains credulity. SECI Reb. at III-D-143-144. The notion that a SARR can collect line-haul revenue for loaded shipments in its selected traffic group without also bearing the cost of empty movements required to supply cars to its

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<sup>86</sup> Contrary to SECI's assertion on Rebuttal, CSXT did not accept SECI's “manifest line-haul credit” concept. See SECI Reb. at III-D-2. Indeed, the very excerpt from CSXT's Reply cited by SECI for that proposition states that “SECI's ‘non-revenue’ traffic concept is neither permitted under SAC procedures nor justified by SECI's claim that the characteristics of cars that it treated as ‘non-revenue loads’ could not be gleaned from the data produced by CSXT.” CSXT Reply at III-C-17-18 n.15.

customers is, on its face, ludicrous. SECI's attempt to "bill" CSXT for the movement of the SFRR's own empty cars invalidates SECI's "merchandise line haul credit" calculations.

Nor should SECI be permitted to claim a credit for moving empty cars associated with the loaded "non-revenue" shipments that (SECI posits) the SFRR would handle for the account of CSXT. SECI did not respond to CSXT's argument that "logic dictates that CSXT would not pay the SFRR for moving empty cars where CSXT is receiving the revenue for the loaded movement." CSXT Reply at III-D-183. Instead, citing the same "prerogative" of a SARR to "select" its traffic, SECI takes the position that "CSXT is not at liberty to remove the non-SARR empty cars from the SFRR traffic base." SECI Reb. at III-D-144.

As CSXT demonstrated in Section II above, neither SAC principles nor prior Board precedents support the notion that a SARR may unilaterally force an incumbent carrier to tender its loaded cars – much less the empties associated with those loaded movements – to the SARR as "non-revenue" traffic. Contrary to SECI's assertion, a SARR's "prerogative" to select its traffic does not include the right to dictate the manner in which traffic outside its selected traffic group will move. *See Major Issues* at 8 ("the complainant selects a subset of that traffic (including its own traffic to which the challenged rate applies) that the SARR would serve"); *TMPA I* at 589 ("The reasonableness of both the placement of the SARR and the traffic group selected by the complainant is open to challenge."). It is most emphatically not reasonable for SECI to select CSXT's empty cars as part of the SFRR's traffic group, and thereby impose upon the incumbent a cost it does not incur in real world operations. Because CSXT would continue to operate its own lines parallel to the SFRR's right-of-way, CSXT would move its own empty cars. CSXT Reply at III-C-46, 50.

SECI also complains that "[e]xclusion of non-SARR empty cars from the SFRR system diminishes the SECI's gross ton-miles and thereby the revenue credit available to the SFRR." SECI

Reb. at III-D-143. This argument begs the question at issue – the legitimacy of SECI’s “manifest line-haul credit” concept. SECI’s explanation is that “the manifest line-haul credit is calculated based on gross ton-miles which necessarily include the tare weights of empty cars.” *Id.* There is nothing “necessary” about SECI’s gross-ton-miles calculation. { } which SECI uses as the basis of its credit concept, does not apply to empty cars, and in contrast to SECI’s average car weight and mileage assumptions, { }.<sup>87</sup>

**2. SECI Greatly Underestimated The Volume Of Switching Activity Required To Meet The Needs Of The Traffic Moving In SFRR Trains.**

Rather than designing local and yard train services to handle cars in the manner necessary to meet the needs of SFRR’s customers, and developing the stand-alone costs of those services as required by the SAC test, SECI simply guessed at the number of switches to be performed by the SFRR. On Rebuttal, SECI does not dispute that witness Crowley guessed at the number of I&I switches to be performed, but claims “Mr. Crowley’s approach was reasonable based on [his] continuing problems with the car/train event data produced by CSXT in discovery.” SECI Reb. at III-D-1 n.1; *see also id.* at III-D-145 (“SECI’s I&I [switch] and yard/local switching cost additives are *reasonable surrogates* for the associated switching activities”) (emphasis added). In so doing, SECI asks the Board to establish a new standard for presentation of SAC evidence, the “reasonable guess.” This would require the Board to inquire into whether the complainant had genuine problems with the adequacy of data produced, well after discovery has closed, or whether such complaints are a smoke screen designed to cover the complainant’s efforts to minimize the costs indicated by a proper SAC presentation. As demonstrated in Section II above, SECI’s proffer of operating costs based upon CSXT’s historic system-average URCS variable switching costs is utterly inconsistent with SAC principles.

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<sup>87</sup> CSXT Reply at III-D-182-83; SECI WP “manifest line haul credit.xls”; SECI WP “CSX-SE-HC-015737.pdf” at CSX-SE-HC-015761.

Moreover, even if SECI's methodology were conceptually valid – and it is not – SECI vastly understated the number of switches that would actually be required to serve the SFRR's traffic. As CSXT demonstrated in its Reply, SECI eschewed the development of a detailed operating plan by witness Reistrup in favor of a convoluted methodology pursuant to which witness Crowley attempted to identify On-SARR and Off-SARR locations that he assumed were not origin, destination or interchange points. CSXT Reply at III-D-4-5. He then counted the difference in the numbers of cars on a train at each such location, eliminated the cars he knew were originated, terminated, forwarded or received, and assumed that the difference was the number of cars requiring intermediate switching. *Id.*

SECI clearly knew whether its “selected” revenue traffic originated and/or terminated on-line. Thus, at a minimum, SECI should have been able to calculate with precision the number of origin and destination switches required to handle its selected traffic group – every movement requires that an empty car be delivered to a customer, picked up as a load, moved to the destination customer, switched as a load at the customer and then picked up as an empty car for movement to the next load. Yet, SECI chose to ignore this information about the SFRR's revenue traffic group and instead guessed at a number of origin and destination switches for that traffic. As CSXT's Reply demonstrated, SECI's “guesstimate” was widely off the mark.

In addition, because SECI ignored the SFRR's responsibility for empty car movements associated with its loaded revenue traffic, it failed to account for the costs associated with switching empty cars. SECI likewise completely ignored both the number and cost of on-line origin/termination switches associated with the “non-revenue” traffic moving in SFRR trains, assuming instead that all such cars would move “intact” across the SFRR network. SECI Open. at III-D-108.

Indeed, SECI's methodology undercounts switch events by design. SECI says that it applied its “surrogate” cost only to those “selected” carloads for which “switching is known to have occurred.”

SECI Open. at III-C-24. SECI’s methodology, which is based upon the difference in the number of cars travelling in a train upon departure from one point and arrival at the next point on the SFRR system, by definition does not capture switch events involving trains that set out and pick up an equal number of cars during their journey between two intermediate points. Indeed, SECI admitted as much when it decided not to use Charleston local trains to test its switch cost assumptions. SECI Reb. at III-C-16 n.15 (“It is possible that some cars were dropped off at a particular station and the same number of cars were picked up at the same station.”). As a result of the numerous errors and omissions in its methodology for determining the volume of switch activity on the SFRR, SECI witness Crowley concluded that the SFRR would need to perform only 419,164 intermediate switch movements. SECI Open. at III-D-109.

CSXT, on the other hand, did not “guess” at the number of I&I switches that the SFRR would be required to perform. CSXT’s train and car service plans are based upon the actual service requirements for each car, loaded and empty, handled by the SFRR. Those plans, developed from the bottom up, account for all of the locomotive, crew and other operating activities required to handle each car. Using those activities, CSXT developed the operating expenses and the real property expenses (*i.e.*, the necessary yards and other facilities) associated with intra- and inter-train switching that a least-cost, hypothetical competitor would incur.<sup>88</sup> CSXT’s switching cost estimate is forward-looking, takes account of all the cars moving on SFRR trains, and is developed in a manner consistent with the principles of the SAC test. In contrast to SECI’s lowball guess of 419,164 switches, CSXT demonstrated that handling the traffic (including “non-revenue” cars) moving in SFRR trains in accordance with customer requirements would involve more than two million switch movements annually. See CSXT WP “Seminole Blocks and Yard Volumes.xls.”

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<sup>88</sup> See CSXT WPs “Seminole Block and Yard Volumes.xls” and “General Freight SFRR 2018 Yard Switching Crews/Locos.pdf.”

**3. SECI Assumes That The SFRR Will Purchase Discontinued Road Locomotives.**

In its Opening Evidence, SECI designated a locomotive type that had been discontinued prior to 2008 (the year in which the SFRR would have to purchase those locomotives). SECI Open. at III-D-4; CSXT Reply at III-D-18. Although on Rebuttal “SECI accepts that AC4400CW locomotives could not be purchased new in 2008,” it asserts that it could purchase those locomotives used for the same price. SECI Reb. at III-D-5. This assertion is supported only by reference to a single advertisement for used locomotives of this type at approximately the same price. However, that advertisement contains no indication that the number of road locomotives needed by the SFRR (196) were available on the market in 2008. *Id.* Furthermore, contrary to SECI’s assertions, the locomotive price it used was not based on CSXT’s most recent purchase prices in 2005, and did not include the additional cost of having the locomotives outfitted for required positive train control and distributed power operations (as contemplated by SECI’s operating plan). *See* CSXT Reply at III-D-18 n.12, n.14. Even if the SFRR were able to purchase all of its required locomotives on the used market at its assumed price (a proposition for which SECI presented no support), SECI did not account for the reduced service lives of used locomotives in its DCF calculations. *See* SECI Reb. WP “Equipment Notes Worksheet.xlsx.” Consequently, SECI has not supported its locomotive purchase cost estimates with credible evidence.

**4. SECI Refuses To Acknowledge CSXT’s Sworn Testimony Of Its Locomotive Lube Costs.**

In its Reply Evidence CSXT pointed out that the locomotive servicing cost presented by SECI failed to include any lube oil costs. CSXT Reply at III-D-21 & n.16, n.17. CSXT presented evidence that the actual lube oil costs incurred by CSXT for the number of locomotives to be in service on the SFRR in 2008 equaled {                      }.<sup>89</sup> In order to estimate the servicing costs for the SFRR, SECI looked

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<sup>89</sup> In the CSXT hierarchy of accounts for the R-1, account “52100800 MTL-LUBRICANTS-LOCO” is reported on line 202 of Schedule 410 Operating Expenses. CSXT Reply at III-D-21 n.16.

to CSXT's 2008 R-1, Schedule 410 line 411 (locomotive servicing - train and helper) and line 427 (locomotive servicing - yard), calculated average costs per locomotive unit mile, and applied the resulting unit cost to the train and helper and yard locomotive units miles developed for the SFRR. SECI WP "III-D-1 Servicing cost.xls." However, SECI failed to include the more than { } in lube oil costs reported by CSXT within line 202, "repair and maintenance."

In its Rebuttal, SECI rejects the { } cost reported by CSXT in its entirety because it was not separately broken out in the R-1, stating that "CSXT's 2008 R-1, schedule 410 shows the amount on line 202 of schedule 410, column C equals \$107.2 million, thus providing no support or verification for the amount included by CSXT" in its Reply Evidence. SECI Reb. at III-D-10 n.4. This is a specious argument; CSXT reported its locomotive lube costs in the R-1 in the line and column clearly prescribed for that purpose – line 202 represents CSXT's "Locomotive Repair & Maintenance Costs," and column (c) of this line 202 represents "Materials, tools, supplies, fuels, & lubricants." CSXT 2008 R-1, Schedule 410 (emphasis added).

Furthermore, CSXT's Reply Evidence on this operating cost is not an "argument" but rather is a statement of fact regarding the amount { } that CSXT incurred in locomotive lube oil costs in 2008. CSXT Reply at III-D-21. CSXT witness Kent, who was authorized by CSXT to sponsor its operating expense evidence, presented sworn testimony that he reviewed CSXT's costs and that this figure is correct. CSXT Reply at IV-76. Witness Kent's sworn testimony is the "support" for this cost figure; SECI refusal to include any locomotive lube oil cost is unwarranted.

**5. SECI Rejected CSXT's Actual Fuel Consumption And Cost Data In Favor Of Its Unsupported Assumptions.**

SECI was provided CSXT's Event Recorder Automated Download (ERAD) data (which contains actual consumption information for CSXT locomotives) in discovery. CSXT's actual fuel costs are reported in its first 2009 Quarterly Financial Report, which also was available to SECI.

Nevertheless, SECI ignored those actual data sources in favor of a convoluted methodology devised to minimize the SFRR fuel costs. Specifically, to develop its fuel costs for the SFRR, SECI:

- (1) calculated 2008 car-mile statistics using the trains it selected for its CSXT train subset, and adjusted to 2009 car-mile levels using Seminole's 2008-to-2009 tonnage ratio;
- (2) then assumed an average tons per car figure (separately for coal, intermodal and merchandise freight) for the 2240 peak trains it modeled for 2018 in the RTC, and multiplied those assumed weights times the 2009 derived car-miles to generate 2009 gross ton-miles;
- (3) then, using { }, Seminole attempted to derive gallons/GTM and \$/gallon; and
- (4) applied those factors to the assumed 2009 GTMs for the SFRR (from step 1), to develop 2009 SFRR fuel consumption and fuel costs for road locomotives.

SECI Reb. at III-D-11-13. As explained in the CSXT Reply evidence, this inherently faulty and overly complicated approach resulted in an understatement of both the SFRR's fuel consumption and fuel prices (evidenced by an unrealistic average of \$1.008 per gallon price for 1Q 2009). CSXT Reply at III-D-22-24.

In contrast, CSXT's Reply evidence used actual consumption data developed from Event Recorder Automated Download (ERAD) data produced to SECI in discovery, related to the actual number of AC road locomotives operating specific trains and applied it to trains operating on the SARR with the same number of AC units. CSXT Reply at III-D-24-25. CSXT used the average cost per gallon (\$1.39) that it actually paid during the first quarter of 2009 and added { }/gallon to reflect CSXT's actual average drayage cost for delivery. CSXT Reply at III-D-25.

SECI characterizes its cost estimate as "CSXT's actual cost of doing business." SECI Reb. at III-D-13. It is not clear (and SECI offers no explanation) how a price per gallon \$0.41 lower than what CSXT actually paid can be CSXT's "actual cost."

**6. SECI Applies A Minimized Surrogate For Intermodal Lift and Ramp Costs.**

As discussed in Section II above, rather than developing the forward-looking stand-alone costs associated with its selected intermodal traffic, SECI attempted to develop a “surrogate” cost based on historical costs rather than the true costs that the SFRR would incur in the real world. SECI’s surrogate costs are based on unworkable assumptions. For example, while SECI purports to have the SFRR step into the shoes of both CSXT and CSXI in order to claim all revenues for selected intermodal traffic on the SARR, SECI deliberately ignores any costs incurred by CSXI that were not first incurred by CSXT. *See* SECI Reb. at III-D-146 (“lift costs were based on the amount CSXT pays contractors for lift services, and the ramp costs were based on the amount CSXI reimburses CSXT for providing ramp services under { }”) (emphasis added). In both cases, SECI ignores the full costs that the SFRR would incur in providing intermodal service, costs that CSXI incurs in the real world. Furthermore, SECI uses only one of the many third-party lift contracts provided to SECI in discovery as the basis for its estimated lift costs for the entire 2,092-mile SFRR system, thereby ignoring differences in prevailing cost levels in different areas of the country.

**B. CSXT’s G&A Evidence Is Well-Supported and Should Be Accepted.**

**1. The Difference Between the Parties**

Although the parties have many disputes about the appropriate level of G&A staffing for the SFRR, the fundamental difference between their competing G&A evidence is quite simple. CSXT built a G&A department in accordance with three fundamental SAC principles:

- 1) The SFRR must perform the same legal, administrative, and commercial functions necessary for a real-world railroad to feasibly serve the selected traffic.<sup>90</sup>
- 2) For each of these necessary functions, the SFRR must be a least-cost most-efficient railroad that achieves best-in-class performance.<sup>91</sup>

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<sup>90</sup> *See WFA* at 15 (“[A]ssumptions used in the SAC analysis . . . must be realistic, *i.e.*, consistent with the underlying realities of real-world railroading.”); *AEP Texas* at 16 (same)

- 3) The SFRR must pay its G&A costs itself and cannot rely on other railroads to provide G&A services that properly are the SFRR's responsibility.<sup>92</sup>

In light of these principles and the real world experience of its G&A expert team, CSXT's reply evidence identified the minimum functions that the SFRR would have to perform to operate and serve its customers and the minimum staffing that an optimally efficient SFRR would need to perform those functions. See CSXT Reply at III-D-48-51. This evidence is precisely what the Board has explained is necessary to support G&A staffing for a SARR: a demonstration that the proposed staff "could feasibly perform the required work, by either explaining the amount and type of G&A work that the [SARR] staff would need to perform or relating the size of the staff to operations of existing firms." *FMC* at 835-36.

SECI, on the other hand, rejects CSXT's bottom-up methodology and instead justifies its G&A evidence by claiming that its staffing for various departments is "consistent with" the staffing levels proposed in prior SAC cases and that CSXT's staffing is not. SECI Open. at III-D-26. In the first place, SECI's claim that CSXT has proposed "the largest staffing level ever proposed by a carrier in a SAC proceeding" is false. CSXT's G&A staffing is well less than half of that accepted by the Board in *FMC*. *FMC* at 835-41 (G&A staff of 553 employees). More importantly, the SFRR is not "consistent with" past SARRs, which typically have been all coal or nearly all-coal. While a majority of the SFRR's traffic base consists of non-coal traffic, no previous SARR accepted by the Board in a coal SAC case has had more than 10% non-coal traffic.<sup>93</sup>

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<sup>91</sup> See *WFA* at 15 ("[T]he objective of the SAC test is to determine what it would cost to provide the service with optimal efficiency"); *AEP Texas* at 16 (same).

<sup>92</sup> See *Duke/CSXT* at 464 ("[I]t is inconsistent with the purpose of the SAC test to assume that the existence of the defendant railroad would limit the costs the [SARR] would incur."); see also *id.* at 443 ("[T]he proponent of a SARR . . . cannot assume that a connecting carrier . . . would alter its existing operations for the benefit of the SARR."); *McCarty Farms*, 2 S.T.B. at 476.

<sup>93</sup> Even the SARR in *FMC* – the only non-coal SAC case that the Board has ever decided – had a traffic group with tonnage that was 67% coal. *FMC* at 725 n.59.

**Table 6  
Commodity Breakdown for the SFRR and Previous SARRs<sup>94</sup>**

	SFRR	Average SARR	Previous SARRs							
			<i>WFA</i>	<i>AEP Texas</i>	<i>Otter Tail</i>	<i>Xcel</i>	<i>Duke/CSXT</i>	<i>Duke/NS</i>	<i>CP&amp;L</i>	<i>TMPA</i>
<b>Coal</b>	<b>48%</b>	<b>96.7%</b>	100%	95.6%	90.3%	100%	98%	95%	95%	100%
<b>Intermodal</b>	<b>11%</b>	<b>0%</b>	0%	0%	0%	0%	0%	0%	0%	0%
<b>Other Non-Coal<sup>95</sup></b>	<b>41%</b>	<b>3.3%</b>	0%	4.4%	9.7%	0%	2%	5%	5%	0%
<b>Total:</b>	<b>100%</b>	<b>100%</b>	100%	100%	100%	100%	100%	100%	100%	100%

Because the SFRR is an unusually complex SARR that would handle significant volumes of merchandise, intermodal, and automotive traffic for thousands of customers, it requires a much different G&A structure than a coal-only SARR serving a limited set of customers. *See CSXT Reply at III-D-54.* The Board made clear in previous SAC cases approving relatively low G&A staffing that the limited customer base and simplified traffic mix of the SARRs at issue in those cases were critical factors in those decisions.<sup>96</sup> In short, there is nothing “consistent” about the SFRR and previous SARRs, and thus no reason for the Board to conclude that a particular level of SFRR staffing is appropriate because it resembles the staffing for a very different SARR in a different case.

A further difference between this case and prior cases is the fact that CSXT’s evidence documents the baseline G&A requirements for the SFRR more thoroughly and more comprehensively

<sup>94</sup> SECI data is drawn from SECI Reb. Table III-D-5 on page III-D-54. Data on prior SAC cases was derived as follows: *WFA*: (*WFA I* at 11); *AEP Texas*: (*AEP Texas Opening* at III-A-8; *BNSF Reply* at III-A-71-72); *Otter Tail*: (*Otter Tail Rebuttal* at III-A-58; *Otter Tail* at B-3); *Xcel*: (*Xcel* at 13); *Duke/CSXT*: (*Duke/CSXT* at 424, 444); *Duke/NS*: (*Duke/NS* at 16); *CP&L*: (*CP&L* at 248); *TMPA*: (*TMPA I* at 588). Data in the “Average SARR” column is an average of the eight cases in subsequent columns.

<sup>95</sup> The non-coal traffic in *AEP Texas* and *Otter Tail* largely consisted of general freight traffic, but may have included some intermodal traffic. It is not possible from the public evidence in those proceedings to identify the proportion of non-coal traffic that was intermodal.

<sup>96</sup> *See, e.g., Otter Tail* at C-9 (citing SARR’s “comparatively small size and limited complexity” and “relatively simple operations”); *TMPA I* at 679 (SARR “would have a single commodity and a stable customer base”).

than in any past SAC presentation. Unlike some prior railroad defendants, CSXT has not simply proposed that the SFRR replicate CSXT's own G&A structure. Instead, CSXT adopted a "bottom-up" approach by identifying the requirements that the SFRR would have to satisfy to function in the real world and analyzing what resources a hypothetical "least-cost, most efficient" SARR would need to meet those requirements.

SECI, by contrast, has made no effort to base its staffing proposals on real-world requirements. In SECI's view, the Board should not take any real-world railroad or benchmark into account when evaluating a SARR's G&A staffing, and instead should accept the SAC proponent's evidence if its staffing resembles that of a SARR in a previous case. But SECI's Rebuttal confirms that it can only support its proposed SFRR staffing by ignoring fundamental SAC principles. It fails to make any provision for the SFRR to adequately perform a number of critical functions (without contesting that the SFRR would have to perform those functions). And it admits that its low staffing for several positions is predicated on the assumption that the SFRR could rely on other carriers to do work for it. *See, e.g.,* SECI Reb. at III-D-62-63, 77-78.

The difference between the parties, simply put, is whether the Board should rubber-stamp SECI's proposed G&A because some of its departmental staffing numbers superficially parallel the numbers accepted in some previous and dissimilar SAC cases, or whether the Board should weigh the parties' evidence in light of the fundamental SAC principle that a SARR must itself perform all the functions that a real-world railroad would be required to perform to serve the traffic at issue. Because CSXT's evidence is consistent with SAC principles, and because SECI's evidence is predicated on violating those principles while paying lip service to Board precedents, CSXT's G&A staffing should be accepted.

## **2. SECI's Rebuttal G&A Evidence is Seriously Flawed.**

The parties' dispute about the appropriate way to develop G&A staffing for the SFRR causes them to disagree about dozens of issues. CSXT will not discuss each of these in this brief, and instead stands by its well-documented Reply Evidence. Below CSXT discusses important points that the Board should consider when weighing the parties' evidence.

### **a. The Board Should Reject SECI's Claims that Real-World Staffing Is Not Relevant to the SFRR's Staffing.**

SECI vehemently asserts that the SFRR would be more efficient than real-world railroads like the KCS and RailAmerica because the SFRR carries a higher proportion of coal. *See* SECI Reb. at III-D-53-54.<sup>97</sup> However, CSXT's G&A staffing assumes that the SFRR would be vastly more efficient than these railroads – CSXT's proposed SFRR G&A expenses as a percentage of revenue are a third of G&W's and less than 40% of RailAmerica's. *See* CSXT Reply at III-D-107. CSXT proposes a G&A staff for the SFRR of 210; KCS, with similar revenues and tonnages, has 568. *See id.* at III-D-112. In every position, CSXT presumed that the SFRR can perform its functions far more efficiently than any other railroad. That said, the experience of similarly-sized real-world railroads is surely relevant to determine what efficiencies the SFRR feasibly could realize. When, for example, SECI assumes that the SFRR could function with one-fifth the customer service personnel of a railroad with half its revenues (*see* CSXT Reply at III-D-61), that assumption is plainly not reasonable. The dispute here is not whether the SFRR would be more efficient than real-world railroads, but rather whether the Board should accept CSXT's supported evidence positing that the SFRR would be more than twice as efficient

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<sup>97</sup> The difference between the commodity mixes of the SFRR and the real-world railroads SECI claims are not comparable is dwarfed by the gulf between the commodity mixes of the SFRR and previous SARRs that exclusively or near-exclusively transported coal. *See supra* Table 6.

as those railroads, or whether it should accept SECI's unsupported assertions that the SFRR would be *six times* as efficient as real-world railroads. *See id.* at III-D-106-113.<sup>98</sup>

**b. SECI's Staffing Assumptions Are Predicated on Fundamental Errors.**

SECI makes four fundamental errors throughout its G&A staffing evidence that the Board should forcefully reject: (1) SECI assumes that the SFRR can rely on other railroads to provide G&A services; (2) SECI fails to provide staff to perform G&A functions it admits the SFRR must perform; (3) SECI predicates its staffing on unreasonable assumptions; and (4) SECI resorts to flat mischaracterizations of the evidence. Examples of each of these errors are discussed below.

**(i) SECI assumes that the SFRR could pass off expenses to other railroads.**

SECI admits that its skeletal G&A staffing for several departments is predicated in part on the assumption that other railroads will handle these functions for it. According to SECI the SFRR "will have little customer service or marketing responsibility" for cross-over or interline traffic, and SECI assumes that "other railroads (particularly CSXT) . . . will bring their own marketing and customer service staffs to bear on issues involving the marketing and tracking of the traffic handled by the SFRR." SECI Reb. at III-D-63. This assumption that the SFRR can take revenues for crossover traffic but push G&A costs for that traffic onto CSXT is a blatant violation of SAC principles that must be rejected. *See Duke/CSXT* at 443, 464; *McCarty Farms* at 476.

Similarly, SECI assumes that the SFRR does not need the legal staff or budget of a typical Class I railroad because it would have "other Class I railroads (along with the AAR) . . . take the lead on

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<sup>98</sup> SECI also makes a number of references to the alleged inefficiencies of CSXT staffing, even going so far as to claim that the testimony of one of CSXT's four G&A experts is somehow questionable because of his experience working at CSXT. *See* SECI Reb. at III-D-55 n.37. SECI's claims that decades-old mergers and collective bargaining cause major Class Is to have inefficient G&A structures are dubious, especially given the reductions in the size of the employee base at CSXT and the other major Class Is that have occurred over the past decade and more. But the important point is that these claims are utterly irrelevant, because CSXT did not use its own staffing to develop any positions for the SFRR.

industry-wide regulatory issues involving the STB or FRA.” It violates fundamental SAC theory to think that the SFRR could rely on other railroads to represent its interests in regulatory matters. And the SFRR certainly could not rely on the AAR to represent its interests since SECI made no provision for the SFRR to pay AAR dues.

**(ii) SECI ignores critical functions.**

SECI does not dispute that the SFRR would be required to comply with all the laws and regulations detailed in CSXT Reply Exhibit III-D-2. And it does not dispute that someone at the SFRR will be responsible for performing all the “Job Responsibilities and Functions” listed in CSXT Reply Exhibit III-D-1. But SECI ignores many of these requirements and fails to provide sufficient staff for others. These omissions raise significant questions as to how an SFRR with SECI’s proposed staffing could function in the real world. For example:

- How will a mere three employees manage the filing of thousands of tax returns? SECI’s vague invocation of “computer processing” is no answer, for SECI did not identify any program or provide any funding for such a program.
- How can SECI’s staff perform all the payroll functions described at CSXT Reply III-D-67-68?
- How can only two employees manage all the financial reporting functions described at CSXT Reply III-D-72-74?<sup>99</sup>
- How can the SFRR comply with the environmental regulations described at CSXT Reply III-D-84-87 when SECI does not identify a single person with responsibility to perform them?<sup>100</sup>

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<sup>99</sup> SECI provides no response to CSXT’s evidence that a least-cost, most-efficient SARR would issue public debt because the financing costs of private debt far outweigh the cost of financial reporting. See CSXT Reply at III-D-65. All SECI does is claim that the SFRR would not need complicated debt instruments. See SECI Reb. at III-D-72. CSXT never said that it would, and CSXT did not propose that any of the SFRR’s staff would devote time to devising debt instruments. The point is rather that because SECI would have publicly issued debt, it would need staff to comply with basic financial reporting requirements.

<sup>100</sup> As CSXT explains in its evidence, the staff in the G&A environmental department have responsibility for entirely different environmental compliance functions than the Managers of Testing and Environmental in the SECI Operating Department. See CSXT Reply at III-D-84. And SECI’s



Director Training Rules and Safety.<sup>102</sup> Since MRL also states that it “employs nearly 900 employees,”<sup>103</sup> it is ridiculous for SECI to assume that the senior HR officers listed on the company’s page of management personnel are the only HR personnel at the railroad.<sup>104</sup>

Similarly, SECI asserted on opening that SFRR dispatchers would be trained at a Johnson County Community College “14-week training course for new untrained dispatchers.” SECI Open. at III-D-56. After CSXT pointed out that JCCC has no such training course, SECI insisted that there was and pointed the Board to a document that SECI claimed was “JCCC’s website material related to the dispatchers course.” SECI Reb. at III-D-97. But that document is plainly not what SECI says it is – it is a description of a series of credit courses in dispatcher training offered at a different community college in a different state. See SECI Reb. WP “JCCC Dispatcher Training.pdf.” There is no evidence of an accelerated 14-week dispatcher course.

**c. SECI Fails to Include Necessary Executive Compensation.**

SECI claimed on opening that it based compensation of the SFRR’s President and Vice Presidents on “comparable and competitive compensation packages presently available in the railroad industry” – in particular the compensation paid by KCS for similar positions. SECI Open. at III-D-41. CSXT demonstrated on Reply that SECI substantially understated the actual compensation of these KCS

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<sup>102</sup> See <http://www.montanarail.com/mngmt.php>.

<sup>103</sup> See <http://www.montanarail.com>.

<sup>104</sup> It appears that a similar management directory for Pan Am Railways was SECI’s predicate for claiming that Pan Am only has two HR employees (even though the directory actually shows three senior HR managers). See [http://www.guilfordrail.com/PAR\\_Phone.pdf](http://www.guilfordrail.com/PAR_Phone.pdf). As with MRL, this is obviously not a complete listing of railroad employees. It is as nonsensical to assume that Pan Am has no more HR personnel as it would be to assume that its Transportation Department only has one employee because the directory only lists one person in that department.

officers because SECI only included base salary and omitted the cash bonuses and stock awards that constitute the vast majority of those employees' compensation. *See CSXT Reply at III-D-98.*<sup>105</sup>

The Board has repeatedly held that cash bonuses are a critical element of compensation that cannot be ignored. *See Xcel at 69-70; Otter Tail at C-12; AEP Texas at 59; Duke/CSXT at 461-62.* On rebuttal, SECI does not dispute this point, but instead objects that “[b]onuses are not specifically identified in the KCS proxy statements.” SECI Reb. at III-D-93. That’s not true. The proxy statements plainly show that KCS paid cash bonuses that were identified as “non-equity incentive plan compensation.”<sup>106</sup> These cash bonuses must be included in SFRR officers’ compensation.

SECI admits that it excluded stock awards from its compensation calculations, claiming that “KCS still does not count stock awards and options as an expense” and therefore that under *WFA* they should not be charged as an expense for the SFRR. SECI Reb. at III-D-93. Again, that is simply not true – KCS now does recognize stock awards and stock options to senior executives as accounting expenses. In *WFA*, the Board rejected an argument that a KCS executive’s stock options needed to be included as compensation because at the time KCS did not recognize any accounting expense for stock option grants. *See WFA I at 49 & n.147 (citing WFA Rebuttal Evidence).*<sup>107</sup> But KCS has since changed how it accounts for stock awards and stock options, and its proxy statements clearly show that it now takes an “accounting expense for these awards.” *See CSXT Reply WP “2009 KCS Proxy*

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<sup>105</sup> *See also CSXT Reply WP “CSXT View of SFRR Personnel” at “KCS Salaries” Tab; CSXT Reply WP “2009 KCS Proxy Statement” at 38 (showing that base salary only constituted between 22.3% and 33.2% of KCS senior executives’ total compensation in 2008).*

<sup>106</sup> *See CSXT Reply WP “2009 KCS Proxy Statement” at 30, 33 (describing cash bonus annual incentive plan); id. at 50 (identifying amounts of non-equity incentive plan compensation paid to senior executives).*

<sup>107</sup> *WFA’s Rebuttal Evidence pointed to a statement in KCS’s 2004 10-K that at the time “no compensation expense [for stock option grants] is recognized for financial reporting purposes.” See WFA Rebuttal Evidence at III-D-100 (citing KCS 2004 10-K at 70).*

Statement” at 50 (see footnotes 4 and 5).<sup>108</sup> When CSXT calculated the elements of KCS officer compensation, it used the “dollar amount [KCS] recognized for accounting purposes” in order to reflect the actual cost of stock awards and options to KCS. *Id.*<sup>109</sup> Because this stock compensation is “counted as an expense by the railroad,” under *WFA* it must be included. *WFA* at 49.

There is no question that if the SFRR is to have “comparable and competitive compensation packages” to those provided by KCS, SECI Open. at III-D-41, it must provide its officers with compensation that approaches the total compensation package of KCS officers. Because that total compensation plainly includes bonuses and stock grants, CSXT’s proposed executive compensation should be accepted.

**d. SECI’s Attrition Rate Should Be Rejected.**

On Opening SECI claimed that the SFRR would have an attrition rate of only 3 percent, but the only support it cited for this extremely low rate is the alleged dropout rate at MODOC Railroad Academy. *See* SECI Open. at III-D-57. On Reply CSXT argued that the dropout rate for a training program was a completely unsuitable proxy for annual SFRR attrition rates, and that third party benchmarks suggest attrition of 11%. *See* CSXT Reply at III-D-104.<sup>110</sup> CSXT also noted that its own attrition rates support that figure. On Rebuttal, SECI entirely abandons the MODOC dropout rate and attempts to introduce new evidence, namely two older magazine articles that it claims support its

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<sup>108</sup> Indeed, the very same 10-K that the Board relied on in *WFA* states that KCS expected to change its future treatment of stock-based compensation as a result of a December 2004 revision to accounting standards for such compensation. *See* KCS 2004 10-K at 70, *available at* <http://www.kcsi.com/en-us/Investors/Documents/AnnualReports/AnnualReport2004.pdf>.

<sup>109</sup> KCS’s 2008 10-K further demonstrates that stock awards and grants of stock options represent a real-world expense for the company, which issues treasury stock to settle all share award compensation. *See* KCS 2008 10-K at 62, 75, *available at* <http://www.kcsi.com/en-us/Investors/Documents/AnnualReports/2009AnnualReport.pdf>.

<sup>110</sup> This is not at all surprising. A 3% attrition rate would mean that only one of every 33 SFRR employees would leave the SFRR each year, which would mean that the average tenure for an SFRR employee would be 33 years, an utterly unrealistic figure.

position. SECI has no justification for not presenting this evidence on opening and it should be excluded as improper rebuttal. *SAC Procedures* at 445-46 (“Rebuttal may not be used as an opportunity to introduce new evidence that could and should have been submitted on opening . . . . New evidence improperly presented on rebuttal will not be considered.”).

While SECI’s violation of the Board’s rules prevents CSXT from presenting evidence to rebut the asserted attrition rates in these articles, even if the articles are accepted as true descriptions of attrition at the time they are seriously outdated. One is over a decade old, and the other (which does not include an attrition rate) is six years old. In fact, the Board has already recognized that one of these same articles is “outdated and unrealistic” and not reliable evidence of attrition. *WFA* at 54. CSXT’s evidence, on the other hand, was drawn from a current third-party study of 2010 human resources benchmarks. *See* CSXT Reply at III-D-105; CSXT WP “IOMA Guide to HR Benchmarks.” That study shows that SECI’s claimed 3% attrition rate is hopelessly unrealistic, and that average attrition is over 16 percent. *Id.* at 104. SECI offers no response to the IOMA study, instead focusing all its attention on the CSXT attrition numbers that CSXT presented to confirm the outside study. And even there all SECI can do is bluster that CSXT’s numbers “cannot be verified.” SECI Reb. at III-D-99.<sup>111</sup> But CSXT’s evidence has been verified by its sponsoring witnesses, and SECI (which made many other workpaper requests) never asked CSXT for data to “verify” its attrition evidence. Indeed, SECI’s insistence that CSXT’s attrition data should be rejected for insufficient documentation is utterly baffling in light of the fact that SECI’s own attrition evidence exclusively consists of extrapolations from unverified hearsay in years-old magazine articles.

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<sup>111</sup> SECI’s suggestion that the SFRR would not face similar attrition rates as CSXT because “the SFRR would not be likely to hire many employees at or above 60 years of age” can be dismissed out of hand. The SFRR’s compliance with the Age Discrimination in Employment Act is not optional. *See* 29 U.S.C. § 623(a).

In short, CSXT's evidence of current attrition rates is plainly the most reliable evidence of the attrition the SFRR would experience.

**e. CSXT's Bad Debt Evidence Should Be Accepted.**

SECI does not dispute that the SFRR could not reasonably expect to collect 100% of revenue that it bills to customers or that accounting standards would require it to maintain an allowance for doubtful accounts. *See* CSXT Reply at III-D-105. Yet SECI refuses to concede that the SFRR would have to account for bad debt as an operating expense. *See* SECI Reb. at III-D-100. Instead, SECI argues that CSXT should have developed an estimate of bad debt expense based on the particular customers in the SFRR traffic group. But there is nothing unique about the SECI traffic group customers to suggest that they would have different payment practices than other CSXT customers. More importantly, whether "better" evidence could have been developed is irrelevant. There is no dispute that the SFRR would incur an expense for bad debt. Because SECI provided no evidence to estimate that expense (although it bears the burden of proof) and because CSXT provided a conservative and well-supported estimate, the Board should accept CSXT's evidence.<sup>112</sup>

**C. CSXT's Maintenance of Way Evidence Should Be Accepted.**

CSXT's maintenance of way ("MOW") experts developed a least-cost most-efficient MOW plan for the SFRR after a detailed examination of the terrain and track at issue and in light of the extensive experience of CSXT expert James Bagley. Mr. Bagley has over three decades of experience constructing and maintaining railroad lines for CSXT and Norfolk Southern and its predecessor. At CSXT Mr. Bagley was Vice President Engineering and Chief Engineering Officer between 2004 and 2008, with responsibility for managing a workforce of approximately 6500 MOW employees. *See*

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<sup>112</sup> SECI's unsupported speculation that interest payments from late-paying customers might offset bad debt ignores the fact that interest payments would compensate the SFRR for the time-value of money it lost because of late payments by customers who paid their bills, not for money lost from other customers' unpaid bills. *See* SECI Reb. at III-D-100.

CSXT Reply at IV-1-2. He previously served as a Chief Engineer Line Maintenance for Norfolk Southern. *Id.* at IV-7.

As a result, Mr. Bagley's relevant experience far outweighs that of SECI's MOW expert Mr. Crouch. While SECI touts Mr. Crouch's "direct field experience as a member of the NS Engineering Department," SECI Reb. at III-D-101, he left NS in 1987 and during his time there worked primarily as a project engineer and only briefly as a Track Supervisor. *See* SECI Open. at IV-28-29. Mr. Crouch's stated qualifications do not reveal any experience with developing maintenance manpower requirements for a railroad or with designing annual maintenance budgets. Mr. Bagley, on the other hand, has extensive real-world experience with MOW staffing and budgeting that he applied to develop a MOW plan for the SFRR.<sup>113</sup>

SECI claims that it developed its MOW evidence the same way that CSXT did. According to SECI, Mr. Crouch designed a MOW plan for the SFRR after considering the terrain, track, and tonnage at issue and by "following the precepts approved by the Board in *WFA/Basin*." *See* SECI Reb. at III-D-106; SECI Open. at III-D-59. Indeed, if one only read SECI's narrative – and did not examine the underlying MOW staffing and budget SECI seeks to justify – one would think that SECI had proposed a MOW plan that was "consistent with *WFA/Basin*" and other Board decisions and that accounted for the varying terrain and heavy tonnage of the SFRR. *Id.* at III-D-59, 60, 68. But the truth is that SECI

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<sup>113</sup> SECI's attempt to undermine Mr. Bagley's extensive qualifications by claiming that he never constructed or maintained the subject lines lacks any merit. *See* SECI Reb. at III-D-103 n.65. First, Mr. Bagley certainly was involved in constructing secondary main and passing siding tracks in connection with CSXT's capital capacity expansion program. Second, SECI's complaint that Mr. Bagley had no "direct experience maintaining" CSXT's lines during his service as its Chief Engineering Officer" is ridiculous. *Id.* The expertise required here is not personally performing maintenance on CSXT lines; what is needed is expertise in developing and managing a comprehensive plan for MOW staffing and budgeting. That is precisely what Mr. Bagley did as Vice President & Chief Engineering Officer for CSXT and as Chief Engineer Line Maintenance for NS. In any event, earlier in his career on the Southern Railway Mr. Bagley directly maintained lines in similar geographical locations and terrains as those found on the SFRR. *See* CSXT Reply at IV-8-10.

proposes to slash the SFRR’s MOW spending to a level far lower than that accepted in *WFA* or any other recent SAC case. Considering the number of track miles per MOW field worker (a metric the Board used in *WFA*) SECI proposes MOW staffing that is less than half of that approved in *WFA*. CSXT, by contrast, conservatively assumes that the SFRR’s MOW workforce will be significantly more efficient than that in *WFA* or any other recent SAC case.

**Table 7**  
**MOW Staffing in Recent SAC Cases<sup>114</sup>**

	<i>WFA</i>	<i>AEP Texas</i>	<i>Otter Tail</i>	<i>Xcel</i>	<b>SECI Proposal For SFRR</b>	<b>CSXT Proposal For SFRR</b>
<b>Field Workers</b>	97	452	437	166	328	562
<b>Track Miles<sup>115</sup></b>	391	1664.1	1485	552.77	3028.83	3186.94
<b>Track Miles/Field Worker</b>	<b>4.0</b>	<b>3.7</b>	<b>3.4</b>	<b>3.3</b>	<b>9.23</b>	<b>5.67</b>

SECI’s proposed MOW budget per track mile is also far lower than that approved in *WFA* and other recent SAC decisions, as demonstrated below.

**Table 8**  
**MOW Budget per Track Mile in Recent SAC Cases<sup>116</sup>**

	<i>WFA</i>	<i>AEP Texas</i>	<i>Otter Tail</i>	<i>Xcel</i>	<b>SECI Proposal For SFRR</b>	<b>CSXT Proposal For SFRR</b>
<b>MOW Budget (in millions)</b>	\$16.46	\$53.2	\$48.8	\$22.75	\$53.8	\$100.8
<b>Track Miles</b>	391	1664.1	1485	552.77	3028.83	3186.94
<b>MOW Budget Per Track Mile</b>	\$42,096	\$31,969	\$32,846	\$41,156	<b>\$17,762</b>	<b>\$31,629</b>

<sup>114</sup> See *WFA I* at 57; *AEP Texas* at 27, 67; BNSF Reply in *AEP Texas* at III-D-167; *Otter Tail* at A-1, C-20; BNSF Supp. Reply in *Otter Tail* at III-D-28; *Xcel* at 48, 79.

<sup>115</sup> As the Board did in *WFA I*, the track miles exclude yards, set-outs and helper tracks. *WFA I* at 57. For CSXT’s and SECI’s respective track miles for the SFRR, see CSXT Reply at III-B-8 and SECI Reb. at III-B-11, II-B-16.

<sup>116</sup> See *WFA I* at 26, 56; *AEP Texas* at 27, 40; *Otter Tail* at A-1, C-19; *Xcel* at 48, 78.

SECI therefore claims that the SFRR would spend approximately half as much on maintenance per track-mile than the MOW spending the Board has approved in any recent SAC case. To illustrate, SECI says that the SFRR will spend about the same amount on MOW that the SARR in *AEP Texas* did to maintain a network only half the size of the SFRR's. SECI presents no evidence to explain how the SFRR could achieve such remarkable savings. Stale platitudes that the SFRR would not be unionized and would not replicate the supposedly inefficient organizations of real-world railroads obviously do not explain how the SFRR's MOW function could be more efficient than those of the nonunionized and optimally efficient SARRs accepted by the Board in other SAC cases. Indeed, SECI devotes much attention to arguing that the SFRR's maintenance needs are more analogous to those of SARRs in the western United States than to the SARRs in the *Duke/CSXT*, *Duke/NS*, and *CP&L* cases. *See, e.g.*, SECI Reb. at III-D-114; SECI Open. at III-D-59. If that were the case, then the SFRR would have similar staffing and budgeting as those western SARRs – not half the workforce and half the budget on a track-mile basis. Indeed, it is CSXT that has conservatively proposed SFRR MOW spending in the range of MOW spending in recent western cases – even though the SFRR has more challenging terrain than the terrain at issue in those cases.<sup>117</sup>

SECI's vastly understated MOW expenses are the product of several significant flaws in its evidence, including its use of simplistic one-size-fits-all assumptions, its failure to account for the increased maintenance required by heavy tonnage loadings, and its systematic underestimates of the facilities the SFRR would need to maintain. CSXT's Reply Evidence thoroughly addresses and refutes

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<sup>117</sup> SECI's speculation that its staffing might be consistent with CSXT's and NS's maintenance practices is unsupported by any evidence and clearly disproven by Tables 7 and 8. SECI's claims that Mr. Bagley should have explicitly relied upon CSXT's maintenance standards to design a MOW plan for the SARR are particularly ironic. *See* SECI Reb. at III-D-103. Had he done so, SECI would no doubt have objected that using real-world Class I standards reflects "unnecessary complication" and is "not strictly required for a least-cost, most-efficient railroad" – as SECI does elsewhere in its evidence. *Id.* at III-D-55. Mr. Bagley did exactly what is required here – he developed a bottom-up maintenance-of-way workforce based on his direct study of the lines at issue and his extensive experience in MOW planning.

these flaws. *See* CSXT Reply at III-D-116-35. SECI’s Rebuttal Evidence has done virtually nothing to correct them. In response to the evidence that SECI proposed one-size-fits-all track crew requirements – one four-person crew for every 100 route miles, regardless of terrain, tonnage, or even track miles – SECI does not add a single new track worker. Instead, SECI responded by creating “floating track crews” out of the track crew staffing it proposed on Opening, thereby making track crews responsible for maintaining even more track. Reshuffling track crew assignments does not fix the fundamental problem that SECI does not provide enough personnel for the SFRR to maintain its track. SECI’s attempt to bolster its unreasonably low staffing with an unsupported anecdote about alleged NS staffing of a single track crew district is similarly irrelevant. *See* SECI Reb. at III-D-113-14.<sup>118</sup> Whether track crews are divided into uniformly sized four-person crews or are flexibly sized in relation to the maintenance needs of their track districts (as they are in the real world), the important point is that organizing the SFRR’s MOW employees into smaller crews does not magically make them twice as efficient as those in *WFA* or *AEP Texas*. SECI’s understaffed track department is just the most prominent example of a consistent pattern of ignoring key maintenance needs<sup>119</sup> and understating key costs.<sup>120</sup>

Furthermore, SECI’s claims that the SFRR does not involve particularly challenging terrain are not supported by any documentation other than a one-page “physiographic map” in its Rebuttal

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<sup>118</sup> There is no reason why this “evidence” was not presented on Opening, and the Board should disregard it as improper rebuttal. Indeed, if SECI had presented this anecdote on Opening, CSXT would have been able to present compelling evidence that SECI substantially understated the track miles for which the referenced crew is responsible.

<sup>119</sup> For example, SECI objects to CSXT’s inclusion of bridge tenders to operate moveable bridges, claiming that it would be more efficient for the SFRR to operate bridges by remote control. *See* SECI Reb. at III-D-120. While remote controlled operation would be a feasible solution, SECI does not provide any funding to construct or operate remote control facilities.

<sup>120</sup> For instance, SECI bases its estimate of bridge inspection expenses only on an equipment rental rate – completely ignoring the cost of qualified contractor personnel to operate that equipment. *See* SECI Reb. at III-D-130.

evidence. *See* SECI Reb. Ex. III-D-1. In contrast, CSXT’s Reply Evidence documented the grades and curvature of SECI’s proposed SFRR roadmaster territories and included meticulous reports and hundreds of photographs illustrating the terrain of the relevant lines.<sup>121</sup> This evidence conclusively rebuts SECI’s assertions. For example, SECI’s claim that “none of the West division lies in mountainous terrain” is flatly contradicted by photographs in CSXT’s workpapers. SECI Reb. at III-D-105; *see* CSXT WPs “P-0163.jpg” – “P-0178.jpg”; “P-0220.jpg” – “P-223.jpg.”

In short, the Board should reject SECI’s unsupported proposal for a SFRR that would maintain over three thousand miles of track and facilities through varied and sometimes-challenging terrain with half the MOW staffing and budget that would be suggested by Board precedent. The Board should accept CSXT’s conservative and well-supported evidence.

**D. CSXT’s Evidence on SFRR Insurance Costs Should Be Accepted.**

SECI’s Rebuttal entirely abandons the proposal made on Opening that the SFRR could achieve similar insurance costs as CSXT. As CSXT argued on reply – and as the Board has recognized in prior cases – major Class I railroads like CSXT can realize significant economies of scale when purchasing insurance and are therefore not appropriate benchmarks for SARR insurance costs. *See WFA I* at 76; CSXT Reply at III-D-177. CSXT therefore calculated insurance costs for the SFRR based on an average of insurance costs for three relatively comparable railroads: KCS, RailAmerica, and Genesee & Wyoming (“G&W”). *Id.* SECI’s Rebuttal accepts CSXT’s general approach, and agrees that KCS is an appropriate comparable. *See* SECI Reb. at III-D-140. However, SECI argues that RailAmerica and G&W should be excluded from the analysis and replaced with Canadian Pacific (“CP”) and Canadian National (“CN”). The Board should reject this transparently result-oriented attempt to depress SFRR insurance costs by including major transcontinental railroads as “comparables.”

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<sup>121</sup> *See* CSXT WPs “SFRR – Track Inspection Reports.pdf”; “SFRR Curves.xls”; “ SFRR Grades.xls”; “Seminole\_vs\_CSXT\_picture legend.xls (index to photographs).”

CN and CP are each major Class I railroads with revenues that far exceed those of the SFRR. CP had 2009 revenues in excess of \$4.3 billion<sup>122</sup> and CN had 2009 revenues of over \$7.3 billion.<sup>123</sup> SECI claims that because these companies' revenues in the United States are "similar" to the SFRR's, their insurance expenses are comparable. But these companies' ability to realize economies of scale in insurance costs is not determined by the size of their United States operations. Both CN and CP earn the vast majority of their revenues in Canadian operations, and companywide their ability to achieve insurance savings is far more similar to that of major Class I railroads like CSXT than it is to the SFRR.<sup>124</sup>

SECI's claim that CN should be used as a source of insurance costs is a particularly egregious attempt to distort the analysis. In the first place, even when only its United States revenues are considered, CN's and SFRR's revenues hardly are "similar" – CN's 2008 R-1 reports United States revenue over \$2.4 billion. *See* 2008 Grand Trunk Corp. R-1 at Schedule 210 Line 13). More importantly, the extraordinarily low insurance estimate SECI derives for CN (0.71% of operating revenues) depends on SECI's inclusion of a 2007 CN report of *negative insurance expenses*. *See* SECI Reb. WP "Rebuttal Insurance Rate.xls" Cell S34. And the very R-1 from which SECI takes this figure made clear that the negative figure resulted from an accounting adjustment to reflect a one-time reduction to CN's provision for personal injury and other claims. *See* 2008 Grand Trunk Corp. R-1 at

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<sup>122</sup> *See* CP 2009 Annual Report at 6 (available at [www.cpr.ca/cms/english/investors/default.htm](http://www.cpr.ca/cms/english/investors/default.htm)).

<sup>123</sup> *See* CN 2009 Annual Report at 12 (available at [http://www.cn.ca/documents/Investor-Annual-Report/2009AR\\_Financials.pdf](http://www.cn.ca/documents/Investor-Annual-Report/2009AR_Financials.pdf)).

<sup>124</sup> While KCS is affiliated with railroads outside the United States, unlike CN and CP approximately half of KCS's revenues derive from its United States operations. *See* KCS 2009 Annual Report at 92 (available at <http://www.kcsi.com/en-us/Investors/Documents/AnnualReports/2009AnnualReport.pdf>).

13. The SFRR, of course, would never have such a negative insurance expense, and there is no possible justification for SECI's decision to use this outlier as a mechanism to depress its insurance estimate.<sup>125</sup>

In short, neither CP nor CN can be considered as a comparable railroad for insurance costs. As for RailAmerica and G&W, SECI is correct that because of the different structure of their organizations, they are not as precisely analogous to the SFRR as KCS. But CSXT's inclusion of RailAmerica and G&W was conservative, because each railroad has *lower* insurance expenses than KCS. The Board should accept CSXT's evidence as the best evidence of record.<sup>126</sup>

**E. CSXT's Estimate of SFRR Ad Valorem Tax Expense Should Be Accepted.**

SECI estimated ad valorem taxes for each of the states in which SFRR operates by presuming that the SFRR would pay taxes at a similar rate as CSXT on a per-route-mile basis. This methodology works well enough for states that use the "summation" method, which simply sums the across-the-fence valuations of individual tracts of a railroad's property in a state. But most states – and nine of the states through which the SARR would operate – use the unit method, which calculates a unit value for the railroad as a whole and assigns a portion of that value to the state. For those states, CSXT developed detailed and well-supported "unit method" tax calculations predicated on the SFRR's expected income value and individual states' assessment rules. *See* CSXT Reply at III-D-178-79; CSXT Reply WP "CSXT Reply Ad Valorem Tax." CSXT's analysis shows that SECI substantially underestimated the ad valorem taxes that the SFRR would incur in these states. This is not at all surprising. Because the unit method is predicated on the value of a railroad as a going concern – and not on the amount for which a

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<sup>125</sup> This is but one of many completely disingenuous and concocted arguments offered by SECI on rebuttal when CSXT's rights to respond are limited. CSXT asks the Board to take notice of SECI's patterns of misrepresentations and misleading claims when comparing the parties' evidence.

<sup>126</sup> If the Board agrees with SECI's argument to exclude RailAmerica and G&W from a consideration of insurance costs, it should use KCS alone to estimate SFRR insurance costs.

railroad could sell its real estate – a hyper-efficient hypothetical SARR should pay a higher rate of ad valorem tax in unit method states than a real-world railroad would.

On Rebuttal, SECI does not contest that the states at issue use the unit method to value property.<sup>127</sup> And it neither questions that CSXT’s ad valorem tax analysis accurately represented those state’s methodologies for calculating ad valorem tax nor identifies a single flaw or calculation error in CSXT’s analysis. The only rebuttal it offers is a claim that CSXT’s ad valorem tax analysis would overstate CSXT’s tax liability when applied to CSXT. *See* SECI Reb. at III-D-141. But the only reason that SECI’s analysis produced an overstated CSXT tax liability is because SECI used a grossly overstated CSXT income value.

SECI overstates CSXT’s income value in two ways. First, it bases its entire calculation of CSXT’s income value on the operating income for 2008 reported in CSXT’s 2008 R-1.<sup>128</sup> But not one of the nine states at issue here calculates income value using only one year’s data – instead, they use an average of income over the last several years.<sup>129</sup> For the SFRR this is of no moment, because the

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<sup>127</sup> SECI hints that the “unit method” is some sort of novel CSXT-invented concept, referring to it as “CSXT’s ‘unit’ method”. *See* SECI Reb. at III-D-142. SECI is wise enough not to state this implication directly, for it is obviously not true. *See* CSXT Reply at III-D-178 & nn. 226 & 227 (citing Supreme Court’s recognition of unit method and study showing that most states use the unit method); *Rail Abandonments—Avoidability of Property Tax Expense Under the Unit Method*, ICC Ex Parte No. 274 (Sub-No. 20), 1989 WL 238764, at \*8 n.5 (served June 5, 1989) (“[A]t least 36 States use some form of unit method.”). The Board’s abandonment rules acknowledge that in some cases the effect of an abandonment on property tax expenses requires analysis of how the abandonment would affect unit method valuations. *See id.*; 49 C.F.R. § 1152.32(j).

<sup>128</sup> *See* SECI Reb. WP “Ad valorem tax – unit method comparison” at Tab “SFRR Income Statement” Cell H24.

<sup>129</sup> *See, e.g.*, The National Conference of Unit Value States, Unit Valuation Standards, at § III.C.1. (available at <http://www.ncuvs.org>, click Standards) (techniques to forecast income streams include use of “straight or weighted historical averages”) (“NCUVS Standards”); Alabama Dep’t of Revenue Property Tax Division Form ADV-U5-16, Railroad Annual Property Tax Data Report, at 3 (available at [http://www.ador.state.al.us/advalorem/forms/ADV-U5-16%20\(12-05\).pdf](http://www.ador.state.al.us/advalorem/forms/ADV-U5-16%20(12-05).pdf)) (requiring railroads to report last five years of operating income). CSXT cites the NCUVS Standards solely to illustrate the general approach that states take to calculate a real-world railroads’ unit value, and CSXT does not necessarily endorse use of the NCUVS standards for other purposes.

SFRR's operating income is relatively constant over time. CSXT's is not. In 2008 its net railway operating income was approximately \$1.45 billion, in 2007 it was \$1.09 billion, in 2006 it was \$1.11 billion, in 2005 it was \$816 million, and in 2004 it was \$531 million.<sup>130</sup> 2008 is the highest income in this range by a large margin, and as a result the average income that states actually use to calculate CSXT's income value is far lower than the 2008 income SECI uses. Second, SECI did not account for the fact that states also adjust railroads' income to account for "the effects of extraordinary income or expenses that will not be incurred in subsequent years." NCUVS Standards at § III.C.2. Again, this does not matter for the SFRR, which has no such charges, but in the real world those charges often affect CSXT's income valuation and tax liability. These glaring flaws all contribute to making SECI's estimate of CSXT's income value far higher than the income value actually used by the subject states to determine CSXT's tax liability under the unit method.

Other than this facially flawed critique, SECI does not offer any rationale for its evidence besides the fact that it is similar to the manner in which parties in past SAC cases calculated ad valorem tax. That may be true, but it is irrelevant. The issue is not whether SECI's evidence is better or worse than evidence in previous cases, but whether it is the best evidence of the SFRR's tax liability in this case. Ad valorem tax has rarely been a contested issue in past SAC litigation, and it does not appear that the Board has ever been asked to pass upon the question of the best methodology for calculating ad valorem tax. In this case, where there is no question that in the real world the SFRR would be subject to unit method valuation in the nine states at issue, CSXT's evidence demonstrating how those unit method jurisdictions would actually calculate the SFRR's tax liability must be accepted as the best evidence of record.

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<sup>130</sup> See Schedule 210, Line 67 for CSXT R-1s for 2004, 2005, 2006, 2007, and 2008.

## **V. CSXT'S ROAD PROPERTY INVESTMENT EVIDENCE SHOULD BE ACCEPTED.**

SECI's case-in-chief understated necessary road property investment costs by approximately \$4.5 billion. *See* CSXT Reply § III-F & Table III-F-1. On rebuttal, SECI expanded the gap between the parties to approximately \$4.75 billion. *See* SECI Reb. at III-F-2. A large proportion of the difference between the parties is attributable to three categories of road property investment: land costs, roadbed preparation costs, and bridge construction costs. As an initial matter, because the SFRR would traverse more valuable land (including several major urban areas) than most previous SARRs, real estate costs for the SFRR are substantially higher than in previous cases. SECI incorrectly asserts that the terrain traversed by the SFRR makes construction easier and less costly than SARR construction in prior Eastern cases. In fact, large sections of the SFRR do cover mountainous terrain in Central Appalachia that is similar to that encountered in the *Duke* and *CP&L* cases. Moreover, other significant – and in some instances unprecedented – construction challenges presented in this case are at least as costly to address as excavation and embankment through mountainous terrain at issue in those prior cases.

CSXT's Reply evidence describes in detail SECI's errors, and other areas of disagreement between the parties concerning SARR road property investment. For the sake of brevity, this brief focuses on a few of the largest significant differences between the parties (primarily concerning land, roadbed preparation, and bridges). CSXT refers the Board to its Reply evidence with respect to the myriad items not repeated here.

### **A. SECI Grossly Undervalues the SFRR's Land Acquisition Cost.**

SECI points out that land costs for its 2,092-mile SFRR right-of-way are unprecedented and complains about CSXT's \$2.4 billion land acquisition cost valuation. SECI Reb. at III-F-2-3. What SECI fails to mention is that the SFRR would traverse some of the most expensive real estate in the country. Never before has a complainant designated a SARR to traverse so many high-cost urban areas, such as the Washington, DC metro area, Atlanta, Nashville, Jacksonville, and numerous mid-size cities.

*See id.* at III-F-3 n.4. The difference between SECI's \$921 million estimate and CSXT's \$2.4 billion valuation is due to the fact that SECI drastically undervalued the land required to build its unprecedented SARR, primarily by failing to use Board-approved valuation methodologies and instead basing its estimate on broad geographic averages and using the wrong valuation date.

SECI's real estate valuation estimates are unreliable and flawed in several respects. A graphic illustration of this fact is that between Atlanta and Cordele, GA, and in portions of Chattanooga and Savannah, SECI's witness inspected and appraised the *wrong right-of-way* ("ROW"). *See* CSXT Reply Ex. III-F-1 (as corrected in March 29 Errata filing). SECI also employed faulty methodology to systematically understate the SFRR's required land investment in the urban areas that comprise the lion's share of SFRR real estate costs. SECI did this by using overly large valuation units in urban areas and failing to use across-the-fence (ATF) methodology to correctly classify and assign values to the properties along the right-of-way.

Another fundamental failing in SECI's appraisal is that it valued the land as of January 1, 2009, two-and-a-half years after the date for land acquisition set out in SECI's construction workpapers. SECI then employed a hidden and unprecedented 15-20% blanket deduction to its (already invalid) valuations and buried the \$132 million deduction in spreadsheet fields without explanation.<sup>131</sup> CSXT Reply at III-F-8-9. On Rebuttal, SECI misstated both Board precedent and CSXT's actual evidence in its attempts to address these two failings. Lastly, SECI also undervalued the easements along the ROW by using CSXT's historical costs of acquiring them rather than ascertaining their current market value. Rather than using the Board-approved ATF method to value the easements along the ROW, SECI proffered the testimony of an economic consultant (not its real estate witness) who estimated CSXT's average historical cost of these easements (acquired between 1849 and 1972) at \$1.48/acre, stating that it

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<sup>131</sup> *See* SECI Workpaper "MREA Final Pricing.xls," "Pricing Details" tab, column AM.

believed that “the 2,642.81 acres of easements will cost [the SFRR] a total of \$3,911.36.” SECI Opening at III-F-9. This failing is fully discussed in CSXT’s Reply at III-F-24.

**1. SECI Did Not Use ATF Methodology as Claimed, But Rather Assigned Values Based on Broad Geographic Averages, Resulting in Undervaluation of Land in Urban Areas.**

The Board has long affirmed real estate valuations based on a sales comparison approach using an across-the-fence (“ATF”) methodology. *See, e.g., Duke/CSXT* at 473 (“The land along the ROW is a prime indicator of a ROW’s value and has been used in all prior SAC cases.”). To this end, the Board has found that “a greater number of comparable sales [] provides a more complete, and thus more accurate, representation of market values.” *Id.* Particularly, the “use of broad geographic averages to determine land values does not take into account the specific uses of the land being valued and the value of comparable sales in the same vicinity.” *McCarty Farms* at 505; *see Duke/CSXT* at 473.

Although SECI’s consultant MillenniumM purports to employ an appropriate ATF valuation methodology in estimating land acquisition costs, its creation of excessively large valuation segments in urban areas is a fatal flaw in its valuation estimates, “because long stretches of land cannot be assumed to have entirely uniform characteristics in such areas.” *See, e.g., CP&L* at 307-08. SECI divided the 2,092 mile ROW of the SFRR into only 280 large valuation segments (averaging 7.5 miles in length), each assigned only a single property classification and unit value. SECI also used only 920 comparable sales for the entire 2,092-mile ROW, the vast majority of which were located outside of the urban areas, which contain the most valuable real estate. By contrast, CSXT witness Tesh (who focused primarily on land values for major metropolitan areas traversed by the SFRR) identified over 2700 valuation units (averaging 0.14 miles in length) and used over 4700 comparable sales for the 387.7 miles of ROW in the nine metropolitan areas he inspected and appraised along both sides of the ROW. *See CSXT Reply Workpapers* “Land Appraisal.pdf” (“CSXT Appraisal”), “Total Summary.xlsx,” “TOTAL SALES.xlsx.”

Because it assigned a single value to large heterogeneous collections of land, MillenniumM was forced to rely on modeling of sales to estimate values, rather than making an informed expert determination of the real world value of the actual abutting parcels on each side of the ROW based on ATF. *See* CSXT Reply at III-F-12-17. SECI's use of such large valuation segments significantly undervalues the urban real estate along the ROW by lumping disparate land uses together, without regard for the actual highest and best uses of the parcels along each side of the ROW. The use of such large imprecise generalizations in valuing the subject land – as SECI has done in this case – is exactly what the ATF methodology is designed to guard against.

At base, SECI asks the Board to accept its broad brush generalized valuation estimates over CSXT's detailed valuations which were developed through in-depth inspections and consideration of exponentially greater relevant market data. MillenniumM states that its "approach stresses unity and consistency of use for the segments of the right-of-way." SECI Reb. WP "MillenniumM Report.pdf" ("MillenniumM Rebuttal") at 1. Conspicuously, what this approach does not emphasize is actual ATF values and HBUs as determined by the market along the ROW. MillenniumM admitted that it did not create its valuation segments based on market considerations. Indeed, MillenniumM itself raises the concern that its appraisal is not an independent assessment:

The MillenniumM approach reported right-of-way value based on line segments defined by the client.<sup>132</sup> The pricing of these line segments, however, was based on our underlying analysis of highest and best use. We applied adjusted comparable sale prices to the more narrowly defined highest and best use units which comprised the various line segments. Multiple highest and best use areas were considered in valuing the administratively defined 'line segments.' (MillenniumM Rebuttal at 30 (emphasis added)).

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<sup>132</sup>Presumably, the "client" that SECI's real estate consultant is referring to is SECI itself. SECI has not claimed any particular knowledge or expertise in real estate valuation, and its "administrative definition" of real estate valuation segments is entitled to no weight.

MillenniumM’s claim that the fact that its valuation segments were not market-defined but client-defined did not affect its valuations is belied by its own workpapers. Although the “Pricing Details” of the “MREA Final Pricing” spreadsheet has multiple columns in which different usage categories can be captured for individual value segments, only 16 out of MillenniumM’s client’s “administratively defined” 280 value segments (less than 6%) reflect multiple uses. SECI Reb. WP “MREA Final Pricing.xls.” Therefore, contrary to MillenniumM’s assertion, “more narrowly defined highest and best units” generally were not reflected in its valuation.

For example, while SECI attempts to rebut CSXT’s showing that SECI mischaracterized the area traversed by the ROW in Savannah, GA, by claiming that it “identified the predominant uses in this portion of the right-of-way as open space, residential, and industrial,” this rebuttal is belied by its workpapers. *See* SECI Reb. at III-F-10; CSXT Reply III-F-13. CSXT showed that SECI’s workpapers classified this area as “open”; residential and industrial uses are not reflected in any of SECI’s workpapers on opening or rebuttal. *See id.*; SECI Reb. WP “MREA Final Pricing.xls,” “Pricing Details” tab. Furthermore, MillenniumM’s “real world perspective” is not backed up by market data. *See* MillenniumM Rebuttal at 10. Rather than present actual market data to respond to the values developed by CSXT witness Tesh’s “parcel-by-parcel approach to pricing,” – which looked above all to the market values for the particular parcels across the fence from the right-of-way – MillenniumM chose instead to rely on assumptions based on “two ‘typical’ city blocks in downtown Washington, DC,” which is hardly relevant to the value of Savannah real estate. *See id.*<sup>133</sup> Unsupported assertions that all HBUs are

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<sup>133</sup> MillenniumM’s critique of CSXT’s Atlanta valuation evidence suffers from the same flaws. *See* MillenniumM Rebuttal at 12-13 (discussing the valuation of land in the outskirts of Acworth, north of Atlanta). As perusal of the CSXT valuation evidence and aerial map A-ATL-01 shows, MillenniumM compares undeveloped land at the edge of town with land adjacent to a large shopping center and then complains of the difference in value. *Compare* CSXT Appraisal at 262 (App. B-24) *and id.* at 68-69 (App. A-6) *with* MillenniumM Appraisal at 101 (listing one comparable sale for Cobb County, GA).

considered cannot compensate for SECI's failures to incorporate these HBUs in its valuation calculations or to use actual market data for the value of land along the right-of-way.

**2. SECI Used the Wrong Valuation Date and Applied a Hidden Deduction to Appraisal Estimates.**

The Board should reject SECI's attempt to undervalue the SFRR's required real estate investment by choosing an appraisal valuation date two-and-a-half years after the acquisition date set out in its construction schedule. As SECI's own appraisal witness admitted, the real estate market experienced a tremendous drop between the real estate acquisition dates in 2006 and SECI's 2009 valuation date. MillenniumM Appraisal at 88. SECI is bound by the construction schedule it set for building the SFRR. It cannot build on land it does not own.

SECI has ignored the Board's instruction that "investments normally would be made prior to the start of service." *Major Issues* at 8. Instead, SECI misstates Board precedent to claim that such precedent supports its January 1, 2009 valuation date. *See* SECI Reb. at III-F-14 (citing *Westmoreland Coal Sales Co. v. Denver & Rio Grande W. R.R.*, 5 I.C.C.2d 1067 (1988)). In *Westmoreland*, the ICC accepted land valuation evidence that represented values as of "the theoretical year of acquisition" (CSXT's position in this case) over evidence that used a later valuation date (which SECI urges here). *Westmoreland*, 5 I.C.C.2d at 1103-04. In the other case cited by SECI, *WFA*, the parties agreed on the land valuation because the parties did not contest valuation date – the decision says nothing about the appropriate valuation date. *See* SECI Reb. at III-F-15; *WFA I* at 78 ("The parties agree on the land values for the ROW."). Both SECI's opening and rebuttal evidence state that 100% of the land for the SFRR would be acquired in 2006, not 2009. *See* SECI Reb. Ex. III-H-1 at 3; SECI Open. at III-F-82; SECI WP "Complete Construction Schedule.xls."

After using an erroneous 2009 valuation date, SECI exacerbated the undervaluation in its discounted cash flow analysis by "indexing" land values back to the 2006 acquisition date. Had SECI

properly valued the land as of the date the SFRR would incur these costs (the 2006 acquisition date) this negative indexing issue would not have arisen. *See* SECI Reb. at III-H-2-3. SECI offers no rationale or justification for the Board to create a new alternative valuation rule for this case.

SECI compounded this error by applying an unsupported blanket discount to the valuations generated by its sales comparisons. SECI does not provide any explanation for this unprecedented \$132 million downward adjustment – no citation to appraisal or economic texts – and indeed SECI did not even mention that it employed this downward adjustment in its Opening Narrative or in MillenniumM’s appraisal report; this adjustment was buried in a field in an electronic spreadsheet workpaper. *See* SECI WP “MREA Final Pricing.xls,” “Pricing Details” tab, column AM. This blanket discount was applied in addition to the adjustments MillenniumM made to the prices indicated by its comparable sales. *Id.* On Rebuttal, SECI claims that this adjustment was supported by MillenniumM’s recounting of the general real estate market reports, and then states that these reports support a drop of 15% in one or two months of late 2008. SECI Reb. at III-F-16. Those reports state no such thing, and CSXT urges the Board to review them with care.

**3. SECI Misstated CSXT Evidence on Rebuttal in an Effort to Divert Attention From Its Own Failings.**

SECI mischaracterizes CSXT’s actual valuation evidence in many of the criticisms it lodges on rebuttal. For example, SECI complains that 50 out of the 708 relevant sales (101 of which were residential properties) identified by Mr. Tesh in Montgomery County were located in Potomac MD. SECI Reb. at III-F-7; MillenniumM Rebuttal at 7. As an initial matter, the 708 sales Tesh evaluated compares with 45 sales total identified by SECI’s witness for the same area. Furthermore, SECI misleads the Board about the location of these sales by stating that “Potomac [not the sales used by CSXT’s witness] is about seven miles away from the SFRR right-of-way,” but does not mention that the actual “Potomac” sales identified are actually located only two-to-five miles away from the SFRR right-

of-way, and well within the geographic range of sales used by SECI itself. SECI Reb. at III-F-7; CSXT Appraisal at 165-86, App. A-14; Millennium Appraisal at 124.

Rather than representing “the most exclusive, highest-priced residential areas in the region,” the mere fact that a property claims a “Potomac” address does not necessarily mean it is in an ultra-high price area (indeed, there are several subsidized housing developments in areas that most residents would refer to as Potomac).<sup>134</sup> The actual data shows that the Potomac sales identified by Mr. Tesh ranged from \$0.50 to \$105/sf with a median price of \$13.98/sf, lower than many of the values in nearby Rockville. CSXT Appraisal at 165-86, App. A-14. While SECI’s witness Millennium states that it “cannot help but assume that these Potomac properties significantly influenced Mr. Tesh’s [] valuation,” such speculation is erroneous. Millennium Rebuttal at 7 (emphasis added). Rather Mr. Tesh’s use of these sales is evidence that, contrary to SECI’s unfounded assumptions and allegations, he did in fact “fully consider specific market factors, physical characteristics, zoning, development potential” and “the broader HBU of economically related areas.” See SECI Reb. at III-F-6.

In another example, SECI claims that “Mr. Tesh apparently determined H&BU by walking the right-of-way and cataloging existing uses.” SECI Reb. at III-F-5 (emphasis added); *see also id.* at III-F-6 (stating that Mr. Tesh only looked at “only existing uses”). There is no better or more reliable way to determine the value of real property than to actually visit and assess the property, which is what expert Tesh did when he walked much of the SFRR right-of-way. CSXT Appraisal at 15. Nowhere in CSXT’s evidence does it say that Mr. Tesh considered only existing uses in determining HBU. See CSXT Appraisal at 10-11, 15. Even if SECI’s strawman assumption were correct, however, SECI’s claim that existing uses lead to overvaluation is incorrect – by definition, the highest and best use cannot lead to a

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<sup>134</sup> Potomac, Maryland is an unincorporated area outside Washington, D.C., which has no legal or official boundaries. The diverse area that the U.S. Census Bureau considers to be “Potomac” for its purposes covers nearly 27 square miles, more than twice the area of adjacent Rockville, MD. See, e.g., [http://en.wikipedia.org/wiki/Potomac,\\_Maryland#Geography](http://en.wikipedia.org/wiki/Potomac,_Maryland#Geography).

lower value than the existing use. *Id.* at 10 (quoting Appraisal of Real Estate at 297 (13th ed.) (“That reasonably probable use, found to be legally permissible, physically possible, financially feasible, and that results in the highest present land value.”) (emphasis added)).

Yet another example of SECI’s misstatement of CSXT data is SECI witness’s discussion of CSXT’s Chattanooga valuations. *See Millennium Rebuttal* at 14-17. Millennium claims that it analyzed section “A-CHAT-06” of CSXT’s valuation report and shows two aerial maps that purport to show that CSXT valuations are unreasonable. Millennium misrepresents CSXT’s valuation determination for these areas, however. The areas in question are actually located in section “A-CHAT-05” and correspond with maps D-CHAT-32 and D-CHAT-33 in CSXT’s workpapers. *Compare Millennium Rebuttal* at 15-16 *with CSXT Reply WP “Delorme Maps-Chattanooga.pdf”* at 32-33; *see also CSXT Appraisal*, App. B-62-63, 69. CSXT’s workpaper maps clearly show that Mr. Tesh’s valuation conclusions are quite different from Millennium’s characterizations of those conclusions. *Id.* Rather than the \$1 - \$3.50/sf valuations Millennium claimed that CSXT attached to the land, Mr. Tesh valued this land at 34¢ to 50¢/sf on the east side of the ROW because of extreme topography, and on the west side at 23¢ where there was extreme topography and \$2-\$2.75 in the industrial sections. *Id.* CSXT’s actual evidence should obviate Millennium’s concern about whether “Mr. Tesh took into account the very low development density and the larger amount of open space” in this area. *See Millennium Rebuttal* at 14.

Millennium’s critique of CSXT’s valuations in the Richmond, Virginia area likewise ignored the actual market data presented in favor of its strawman assumptions. Although Millennium acknowledged that in one small segment of the “A-RICH-02” aerial map valuation section alone “the lot sizes ranged from about 10,400 square feet . . . to 19,760 square feet . . . to 62,400 square feet,” and even showed illustrations of these lots, it ignored that real world evidence “[f]or purposes of this analysis.”

Millennium Rebuttal at 18-20. Instead, “based on a discussion with the local assessment office, [Millennium] assumed an average or typical lot size of 0.5 acres or 21,780 square feet (43,560 square feet/2).” *Id.* at 20 (emphasis added); SECI Rebuttal at III-F-12. After thus “establishing” this otherwise unsupported “typical” lot size, Millennium uses tax assessments to claim that “the range of raw land values concluded by Mr. Tesh to a ‘typically-sized’ single family home lot of 0.5-acres” is unreasonable. *Id.* What is unreasonable is to ignore actual documented facts, including market data for actual lots, in favor of tax assessment values of an assumed “typical” lot.

Millennium does not even claim that the tax assessment values it used were of right-of-way lots or other land across-the-fence from the ROW. Furthermore, the Board does not use real estate valuations based on tax assessments when appraisals are available. *N.Y. Cent. Lines, LLC—Abandonment Exemption—In Berkshire Cty., MA*, Docket No. AB-565 (Sub-No. 3X) (served July 12, 2002), slip op. at 4, *citing Union Pac. R.R.—Abandonment Exemption—In Rock, Green and Dane Ctys., WI*, Docket No. AB-33 (Sub-No. 119X) (served Nov. 2, 1998), slip op. at 3 (“tax assessments are not necessarily an accurate measure of market value.”). As even the illustrations presented by Millennium shows, there is no typical lot size presented by the actual market data. *See id.* at 19. As both the limited comparable sales presented by Millennium and the more comprehensive ones included by Mr. Tesh show, market prices for smaller lots are generally higher on a per square foot basis than those for large lots. *See Millennium Appraisal at 114-15; CSXT Appraisal at 205-12, App. A-20-22.*

As a result of SECI’s mistaken appraisal of the wrong ROW, faulty methodology, transparent attempt to undervalue the ROW by using a valuation date more than two years after the acquisition date, and SECI’s misstatements of CSXT evidence, CSXT’s evidence regarding the SFRR’s land acquisition costs is clearly the most reliable and probative. The Board should adopt CSXT’s sound, carefully developed and supported evidence and SFRR real estate valuation.

## **B. Roadbed Preparation**

SECI understates SFRR roadbed preparation costs by more than \$780 million. *See* SECI Reb. Table III-F-3, at III-F-34. Dissatisfied with the real world costs of earthwork and excavation preparation reported in the R.S. Means Handbook that the Board has used as the standard for estimating those costs in nearly every previous SAC case, SECI asks the Board to depart from that tried-and-true standard and instead substitute costs from a 1.3 mile rail line relocation project as the basis for estimating earthwork costs necessary to build the 2000-mile SARR network. As CSXT demonstrated, the special circumstances and conditions of that small, isolated siding relocation project (the “Trestle Hollow Project”) – notably including high concentrations of excavation materials moved relatively short distances – produced peculiarly low earthwork costs that are a wholly inadequate basis for estimating earthwork costs to construct a 2000-mile railroad traversing myriad different types of terrain and topography across much of the eastern United States. *See* CSXT Reply III-A-27-45. SECI’s reason for advocating this radical departure from sound, well-established Board practice and precedent is apparent – the unit costs of the small, atypical and inapposite project are far lower than applicable unit costs reflected in Means for large projects with the wide-ranging, diverse and challenging conditions that would be presented by the construction of the SFRR. If the Board were to follow the unprecedented approach advocated by SECI, roadbed preparation cost estimates would be driven to artificially low (and unattainable) levels, thereby substantially skewing the road property investment component of the SAC analysis.<sup>135</sup>

Contrary to SECI’s assertion, *WFA* does not support the approach SECI advocates in this case. In *WFA*, the defendant carrier produced its own actual unit costs for a recently completed *main line*

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<sup>135</sup> SECI includes for the first time on rebuttal a table purporting to show that selected state Departments of Transportation figures reflect lower unit prices than those found in the Means Handbook. But SECI includes no documentation supporting those values. More importantly, SECI has not demonstrated that the reported unit costs are comparable in type or scope to the excavation costs for the SFRR.

construction project. Unlike the Trestle Hollow project, the line for which the carrier provided construction unit costs was *on the SARR route*. And, unlike the 1.5 mile Trestle Hollow line relocation, in *WFA* the defendant carrier's large main line construction project was of sufficient scope, scale, and use to provide a relevant benchmark: the BNSF mainline project used to develop earthwork costs in *WFA* covered a substantial portion of the relatively short SARR proffered by complainants.

Importantly, in *WFA* the defendant carrier *agreed* that its own experience constructing the line to be replicated by the SARR provided accurate evidence of SARR construction costs, and therefore it accepted the use of those costs for purposes of calculating SARR earthwork costs. *See CSXT Reply at III-A-28*. Here, in contrast, CSXT strongly disputes SECI's unprecedented proposal because those costs for voluminous and highly concentrated earthmoving activities (in one small, non-representative area) bear little resemblance to the costs of constructing a very large stand-alone railroad spanning diverse topography and conditions. Costs incurred on a small isolated project that is not even on the SARR certainly provide no basis for the Board to abandon its longstanding, consistent use of the well-respected Means data as the standard for construction costs in SAC cases. The Board should reject SECI's unprecedented attempt to use a minor, irrelevant project to artificially depress reasonable SARR construction costs, and instead adopt the roadbed preparation costs presented by CSXT, which were developed using sources and methods approved by the Board in the overwhelming majority of SAC cases.

**C. SECI Did Not Adequately Account for the Capital Costs of Constructing Spurs, Industry Tracks, Turnouts, and Switches Necessary to Serve SFRR Customers.**

On Reply, CSXT demonstrated that SECI had not accounted for the costs of the track and facilities necessary to serve the overwhelming majority of SFRR's 884 customer locations. *See, e.g., CSXT Reply at III-B-11, Ex. III-B-2*. CSXT conservatively estimated the spurs, industry tracks, and turnouts required to serve those customers would require approximately 22.27 miles of track. *See id.*;

CSXT Reply WP “CSXT Reply Track and Facilities Summary” Tab “Customer Tracks.” On rebuttal, SECI assumed, without providing any specific support, that in virtually every instance a single industrial lead would be sufficient to serve numerous customers in a given area, and further claimed that individual customers would pay to construct the tracks and facilities necessary to serve them directly. *See* SECI Reb. at III-B-24-27. As a result, SECI assumed a total of 83 industrial spurs, each only 33 feet in length, and added a mere 0.52 miles of track investment. *See id.* at III-B-27.

SECI presented no evidence to support its rebuttal assumption that numerous customers would all be served from the same industrial lead. Particularly given the very short length of the industry leads assumed by SECI, it is in fact highly unlikely that several customers would be accessed by the same lead. *See supra* at 39 n.30. Nor has SECI presented evidence demonstrating that customers paid for the turnouts and access tracks at issue.<sup>136</sup> Because SECI has failed to carry its burden of showing that 83 short industrial leads would be sufficient to serve its 884 customer locations, or that customers would pay for the necessary additional access track, the Board should adopt CSXT’s evidence of the cost of track necessary to serve SFRR customers. *See* “CSXT Reply Track and Facilities Summary.xlsx” (Tab Customer Tracks).

**D. SECI’s Bridge Cost Calculations Fail to Take Into Account Essential Design and Engineering Elements, and Are Riddled With Errors.**

**1. SECI’s Uncorrected Conceptual and Design Mistakes**

Bridge costs are a third area of major differences between the parties. SECI’s bridge cost evidence and calculations contain a constellation of significant errors. Those numerous flaws consist of conceptual and design mistakes, as well as implementation and calculation errors. As CSXT pointed out

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<sup>136</sup> SECI cites a 2003 document entitled “CSX Guidelines for Private Sidetracks” to support its claim that CSXT requires most customers to pay for construction of access tracks. By definition, however, this is a policy concerning “private” (i.e. customer-owned) sidetracks. It proves nothing about the frequency with which CSXT customers build private sidetracks, what CSXT’s general practice is with respect to tracks necessary to access customers, or any of the specific customer access tracks at issue in this case.

on Reply, SECI's Opening errors produced both overstatements and understatement of SFRR bridge investment costs. On Rebuttal, SECI accepted only those corrections that had the effect of decreasing bridge investment costs, and ignored the errors whose correction would increase SFRR bridge investment costs.

SECI's first, overarching mistake is its simplistic assumption that it could posit four standard types of bridges and then plug one or more of those types into each area requiring a bridge, without any specific underlying engineering design or calculations or other essential supporting engineering information and analysis. As CSXT explained on Reply, such a facile approach glosses over the varied features and conditions of the waterways, geographic features, roadways, and other areas traversed by bridges on the SFRR, and the correspondingly varying engineering, structural, and construction requirements and challenges they present. *See* CSXT Reply at III-F-67-76. While the standardized bridge types may work in some situations, it is impossible to determine the adequacy of SECI's hypothetical bridges based on its evidentiary submissions, because they lack essential supporting engineering calculations. The Board should reject SECI's simplistic and unsupported notions of bridge design and construction, and instead adopt the carefully developed and supported (and more realistic) evidence and cost estimates developed by CSXT's bridge experts.

In several instances, SECI's unsupported assumptions would result in demonstrably inadequate structures that would fail to meet governing engineering, regulatory, or industry standards (many of which are necessary to ensure safety). For example, on opening SECI failed to provide essential calculations to support its bridge design elements and show that they satisfy 2009 AREMA requirements (for items such as pile stresses and elastomeric bearing design). Instead, SECI simply submitted bridge drawings and flatly asserted – without any supporting calculations or analysis – that the structures, substructures, and other design elements would meet 1997 or 1999 AREMA standards. CSXT pointed

out this failure, and developed and produced rigorous calculations necessary to determine appropriate design details and specifications. On rebuttal, SECI furnished no calculations or analysis to support its case-in-chief bridge components and design elements, which are fundamental to feasible and safe bridge engineering and construction. Nor did SECI challenge CSXT's calculations, or respond to CSXT's showing that many of the elements in SECI's case-in-chief were inadequate and failed to meet current bridge engineering codes and guidelines.<sup>137</sup>

This is not a matter of choosing between two competing, properly developed and supported sets of design calculations. Rather, SECI's submissions (which consist primarily of drawings without analysis or calculations attempting to show they meet any – let alone current – engineering standards and requirements) are unsubstantiated, conclusory, and lack essential quantitative analysis.<sup>138</sup> The only calculations adequate to support bridge designs and satisfaction of essential engineering standards (including AREMA requirements) in the record in this case are those submitted by CSXT in its Reply evidence. SECI's failure of proof on this critical element of its evidence means the Board must use CSXT's bridge design, structure and substructure specifications for SFRR bridges.

Moreover, even if SECI had submitted calculations to support its bridge design elements – which it did not – by SECI's own admission, the few specific design standards its engineers considered were 10-12 years old. *See, e.g.*, SECI Reb. at III-F-84 to 85. On Rebuttal SECI attempted to justify its

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<sup>137</sup> SECI did submit some calculations on rebuttal, but only for items that CSXT did not challenge on Reply. For example, SECI's Rebuttal included calculations for through plate girders and prestressed I-girders. But CSXT did not challenge the load capacity of the I-girders, but rather whether the load could be distributed adequately with the deck and ballast sections provided. *See* CSXT Reply at III-F-72.

<sup>138</sup> In response to CSXT's showing that SECI's bridge piles and footings were inadequate and did not meet AREMA requirements, SECI simply claimed that a rebuttal workpaper showed that "SFRR's bridges meet all AREMA standards." SECI Reb. at III-F-86. That one-page workpaper, however, shows nothing about compliance with AREMA standards, or any other engineering standards. *See* SECI Reb. WP "Bridge pile structures.pdf." Instead, the workpaper consists of simple drawings of two basic types (one repeated 3 times) of pier piles that do not even *mention* AREMA standards, let alone attempt to demonstrate the piles represented in the drawings meet applicable engineering codes or requirements.

reliance on outdated 1997 and 1999 standards by claiming that, for some selected bridge elements (including piles), those superseded standards are “functionally no different” from 2008 AREMA standards. *See id.* What SECI did not consider is that AREMA guidelines for longitudinal force calculations (the key factor driving pile requirements) have changed substantially over time, including important changes based on AAR research between 1997 and 2008. *See AREMA Manual for Railway Engineering Chapter 15 Commentary at 9.1.3.12 (2009).* As the AREMA Manual discusses, longitudinal force specifications were higher from 1932 to 1968 (the period during which most CSXT bridges were built). In 1968, AREA (predecessor to AREMA) introduced new calculations, which “resulted in a vastly reduced longitudinal force requirement.” *Id.* The introduction of high adhesion locomotives, ECP brakes, and other developments led to additional AAR tests in the late 1990s, which showed that longitudinal forces were far higher than had been assumed under the standards in force from 1968 to 1997.<sup>139</sup> *See id.* Beginning in 1997, AREMA made several changes to longitudinal force calculations and specifications based on further tests, which had the combined effect of significantly increasing longitudinal force requirements. As a result of these changes, longitudinal force specifications today (2008-2009) are similar to the standards from 1932 to 1968, and much higher than the standards in place from 1968 to 1997. *See id.* Because of these and other substantial changes in a variety of engineering requirements and specifications, it is not appropriate to rely on AREMA guidelines that are more than a decade old.<sup>140</sup>

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<sup>139</sup> Some longitudinal force calculations and standards were changed in 1997 as a result of initial testing. Others were not changed until later years. Even as to the standards that were changed in 1997, however, SECI has not submitted calculations or analysis showing that its designs would meet those standards.

<sup>140</sup> Moreover, there have been such substantial changes in longitudinal force science, knowledge, and standards in the last several decades that a bridge designer cannot demonstrate a bridge design is adequate to meet current standards by simply asserting – as SECI essentially does – that its design features mimic or approximate features of existing bridges. At a minimum, a bridge engineer must perform (and document) calculations and analysis sufficient to ensure that a bridge design is adequate (based upon current knowledge and standards) to bear and withstand today’s unit train coal loads safely.

SECI's rebuttal submission frequently relies on unsupported speculation and supposition about important costs and parameters of bridges – asserting that something is “likely” or “probable,” or “may be” or “are generally,” or that SECI witnesses “suspect,” or “assume that,” or have a “recollection” – without providing any documentary evidence, citation to authority, or other support. See SECI Reb. III-F-89-108. Such unsupported musings and assertions are not evidence, and they surely do not rebut CSXT's specific, well-supported (including essential calculations that are conspicuously absent from SECI's evidence), and well-documented bridge evidence.

At bottom, SECI has failed to submit design and engineering calculations and analysis required to show that its bridge designs and specifications would meet applicable engineering and safety standards.<sup>141</sup> This is a failure of proof on an element of a SAC case (investment costs of safe, feasible, and adequate SARR bridges) on which Complainant SECI bears the burden of proof. CSXT supported all of its design element requirements with calculations, and SECI did not challenge those calculations or the design requirements they support. Accordingly, the Board should adopt CSXT's Reply evidence with respect to all issues and matters concerning bridge designs and elements necessary to meet engineering standards and requirements.

## **2. SECI's Implementation and Calculation Errors.**

In addition to major conceptual and design errors, SECI's bridge cost calculations made numerous calculation and implementation errors, a few of which are summarized here. First, SECI erroneously excluded from its cost calculations fully 133 railroad bridges and 104 overhead bridges the SARR would be required to construct. Second, SECI assumed one of its bridge types was 190 feet long rather than 90 feet, thereby *overstating* SECI's cost estimates by approximately \$300 million (this

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<sup>141</sup> As demonstrated, SECI's assertion that AREMA bridge component specifications have not changed materially since 1997 is rendered academic by its failure to submit calculations or other evidence sufficient to show SECI's proffered bridge designs satisfy even those outdated standards.

correction, which favors SECI, is one of the very few CSXT corrections that SECI accepted on rebuttal). Third, SECI included costs for only one-half of the piling tips and caps required for SARR bridges. Fourth, and perhaps most significant, SECI's cost estimates failed to take into account the substantially higher construction costs of bridges built over water. *See* CSXT Reply at III-F-77-78. This failure may be due to the fact that none of the projects that SECI's consultants relied upon to develop its bridge costs involved the construction of structures over major waterways. *See id.* The following section discusses in more detail some of the errors in SECI's assumptions, evidence, and arguments concerning bridges over navigable waters.

### **3. Significant Flaws in SECI's Evidence Concerning Bridges Over Navigable Waters.**

SECI has a fundamental misunderstanding of how requirements for horizontal and vertical clearances for bridges over navigable waters are determined. The United States Coast Guard mandates clearance requirements – the view of SECI's witness, or any other private person, about whether a particular clearance is necessary is irrelevant, because USCG-established clearances are required by law. *See, e.g.,* Coast Guard Bridge Administration Manual Parts 1-2, 4-6 (2004). Below, CSXT briefly responds to some of the specific arguments SECI raised on rebuttal concerning bridge clearance requirements and other requirements for bridges over navigable waters, and their corresponding costs.

- Required channel clearances (horizontal and vertical clearances) are established by the Coast Guard, which has statutory responsibility and authority to set all such clearances. *See* 33 U.S.C. § 535; 33 C.F.R. Parts 114-118; Coast Guard Bridge Administration Manual at 2F – 2K, Chapters 4-5 (2004). Parties are required to abide by the requirements specified by the Coast Guard, and may not substitute their opinion for Coast Guard requirements.
- SECI failed to identify and apply governing Coast Guard clearance requirements. If SECI did not find clearance requirements on the Coast Guard internet website, it assumed there were no such clearance requirements, and instead relied on its witness's opinions to estimate appropriate clearances. *See, e.g.,* SECI Reb. III-F-86. There are, however, several other publicly available sources of information that provide clearance information not listed on that website, including the primary source used by CSXT's experts, the U.S. Coast Guard's *Bridges Over the Navigational Waters of the United States*. This publication is the most exhaustive listing of navigable waterway clearance requirements. Contrary to SECI's

suggestion (Reb. III-F-88 to 89), both the U.S. Coast Guard and bridge engineers continue to rely on this “old” publication today. In the few instances in which this source did not contain the applicable clearance requirement, CSXT’s experts contacted the Coast Guard directly and obtained the applicable requirements. CSXT documented this exchange of information in its Reply workpapers. The Coast Guard’s clearance requirements are controlling federal law, and SECI’s contrary views of what clearance requirements “should be” are simply irrelevant. *See* 33 U.S.C. §§ 401, 491-535; 33 C.F.R. §§ 114-118; *see generally* U.S. Coast Guard Bridge Administration Manual (2004).

- SECI’s opinion concerning whether a movable bridge is needed or its frequency of use is irrelevant. *See, e.g.*, SECI Reb. III-F-88. Once a moveable bridge is put into service, the Coast Guard requires that it remain operational until the Coast Guard itself issues an order superseding that requirement. *See, e.g.*, 33 C.F.R. Parts 114-115, 117.7 to 117.8 (permanent changes to drawbridge operating requirement must be made through administrative rulemaking process); U.S. Coast Guard Bridge Administration Manual at I-7 to I-10 (Parts 1.D and I.F) (permanent conversion of moveable “drawbridges” to fixed bridges requires permitting process and Coast Guard issuance of a permit). SECI provides no evidence to suggest that the Coast Guard has ordered that any of the bridges in question be closed to navigation, or authorizing the moveable span to cease operation or convert to a fixed span. Thus, consistent with existing requirements, the SFRR would be required to build and maintain moveable bridges where they exist today.<sup>142</sup>
- Bascule bridge span unit costs. SECI is correct that CSXT’s experts inadvertently failed to take into consideration certain data concerning the real-world cost of bascule spans. *See* SECI Reb. at III-F-107. CSXT accepts SECI’s estimate of the unit cost for bascule spans.
- Vertical lift bridge unit costs. Without any supporting evidence or data, SECI relies upon bascule span costs to claim that “off-line” construction costs for vertical bridges would be half the cost of online construction cost. CSXT’s Reply presented data that fully supported its vertical bridge unit costs. The lower costs of the Pascagoula bascule were due to a number of factors, only one of which was “off-line” construction. SECI offers no cost data or other evidence whatsoever on rebuttal to support its speculation that the SFRR could construct a vertical lift bridge for half of the cost demonstrated by CSXT’s evidence.<sup>143</sup>
- SECI asserts that CSXT relied on an “out-of-date” Coast Guard publication for moveable bridge spans. SECI Reb. III-F-87. SECI is incorrect. The publication CSXT used is the most recent version available, and it is not out of date. In the real world, moveable bridge

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<sup>142</sup> In some instances, SECI “questions” whether a moveable span would be required (again, applicable requirements are established by the Coast Guard, not SECI’s subjective views), but asserts that “to be conservative,” it included 10 percent of the costs of a bascule bridge. *See* SECI Reb. at III-F-89-90. This is not “conservative,” it is arbitrary and illogical. Either a moveable span is required (as determined by the Coast Guard) or it is not. If a moveable span is required, ten percent of the cost would obviously be inadequate to construct that span.

<sup>143</sup> SECI also claims that CSXT’s use of the actual construction costs of one bridge “is suspect because it is a two-track bridge.” SECI Reb. at III-F-108. This is simply false. To develop the unit costs for vertical lift bridge, CSXT’s experts used the costs of two actual bridges, each of which was single track. *See* CSXT Rep. WP “Bridge-D.pdf.”

engineers continue to rely heavily upon this publication as a key source of information concerning specific bridges and waterways.

- On several occasions, SECI flatly asserts that CSXT's bridge costs are too high, without providing any evidence to support that claim. *See, e.g., id.* CSXT provided actual construction cost data from real world projects to support its bridge cost estimates. Because SECI provided no actual cost data to contradict the documented costs presented by CSXT, the only supported cost evidence in the record for these items is the evidence submitted by CSXT.
- Without any support whatsoever, SECI flatly asserts that "moveable spans are generally not paid for by the railroad when they are installed over navigable waterways . . ." SECI Reb. III-F-105. In fact, the opposite is true – Rail carriers generally pay for moveable railroad bridge spans (Unlike some roads, rivers and other navigable waterways were in place long before the railroads). CSXT's bridge experts determined that, on average, the Coast Guard pays for or subsidizes less than one bridge per year. And, federal funding for moveable bridges began in 1940 – by definition, the federal government did not pay for moveable railroad bridge spans erected prior to 1940. *See* Truman-Hobbs Act, 33 U.S.C. §§ 511-523. SECI provides no evidence that the bridges at issue in this case were the exception to the general rule that railroads pay for the construction of moveable bridge spans.
- Where SECI asserts the SFRR would install a higher vertical clearance bridge instead of the existing moveable bridge over a navigable river, it fails to adequately account for the substantial additional costs it would incur in increasing bridge height. For example, SECI maintained on rebuttal that the fixed bridge it proposed on opening (with a 60 foot vertical clearance and 145 foot horizontal clearance) should be used instead of the bascule bridge meeting Coast Guard clearance requirements that CSXT used on Reply. *See* SECI Reb. at III-F-90 to 91. But SECI fails to include the very significant additional roadbed preparation and capital investment that would be required to raise the elevation of existing CSXT track and grade to the level necessary to support the 60-foot vertical bridge clearance it assumes. *Compare* SECI Reb. II-F-90 to *id.* at III-F-92 (a picture of the existing CSXT moveable bridge, showing elevation a few feet above the water). SECI's earthwork costs are based on quantities reported in the ICC Engineering Reports – which are based on existing track elevations. SECI's workpaper "SFRR Grading.xls" does not include any of the additional investment that would be required if a bridge's height were increased considerably, as SECI posits. Nor do SECI's RTC model runs – which assume current CSXT grades – capture the additional operational burdens of significant grades approaching the higher bridge.

**E. SECI's Attempt to Change from Constructing a Line to the Paradise Power Plant to Claiming it Would Use Trackage Rights is a Prohibited Change of its Case-in-Chief on Rebuttal.**

On rebuttal, SECI attempted to change its opening case-in-chief by claiming the SFRR would not build the Paducah & Louisville Railroad ("PAL") line it relies upon to serve TVA's Paradise power plant near Drakesboro, Kentucky, but would instead move that traffic using trackage rights over the PAL. *See* SECI Reb. at III-F-80 (claiming SFRR would not be required to pay for 13 bridges on that

segment because it would move that traffic using trackage rights on the PAL).<sup>144</sup> On opening, SECI posited that it would construct the PAL segment in question, and did not mention trackage rights over that segment. *See* SECI Open. WP “Seminole Florida Route Miles” (including approximately 27.5 miles of the Paradise Branch to be constructed and operated by the SFRR). CSXT did not challenge SECI’s opening evidence assumption that the SFRR would build and operate the Paradise Branch. Accordingly, under the Board’s rules, SECI may not change that unchallenged element of its case-in-chief on rebuttal. *See, e.g., Duke/NS* at 100 (permissible rebuttal is limited to those matters challenged by the railroad); *SAC Procedures* at 445-46.

Moreover, SECI’s own rebuttal evidence belies the assertion that the SFRR would not build the Paradise Branch. Its rebuttal route mileage workpapers include 27.53 miles for the Paradise Branch, to be constructed and operated by the SFRR. *See* SECI Reb. WP “Seminole Florida Railroad Route Miles REBUTTAL.xls.” And, SECI’s rebuttal evidence includes no trackage rights payments for the PAL Paradise Branch. *See* SECI Reb. WP “Trackage Rights Fees.” Thus, contrary to the conclusory assertion in SECI’s rebuttal bridge chart (SECI Reb. III-F-80), its own rebuttal evidence shows the SFRR would construct and operate the Paradise Branch and would pay no trackage rights fee for that segment. The SFRR must pay for the properly developed and calculated costs of constructing (and operating) the Paradise Branch, including the costs of the 13 bridges on that line.

**F. SECI Fails to Include Necessary Costs for Ownership of the Monongahela Railroad, Over Which the SFRR Would Operate.**

SECI fails to account for CSXT’s share of the cost of constructing the MGA lines, which the SFRR would use to serve several mines in Pennsylvania and northern West Virginia. As CSXT has explained, NS and CSXT acquired the MGA (the former Monongahela Railroad) from Conrail as part of

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<sup>144</sup> SECI also notes that CSXT did not include the 13 bridges in materials produced in discovery. This is because those bridges are on a line owned by the PAL, not on a CSXT line. CSXT’s actual route to serve the Paradise power plant does not traverse that PAL segment.

the Conrail transaction. CSXT paid good and valuable consideration in exchange for the right to use of, and equal access to, the MGA facilities. The final implementing agreements “allocated” the MGA to NS, and the Monongahela Usage Agreement (“MUA”) provided that NS would “control, operate, and maintain” the MGA. *See* MUA at 1-2 (CSXT Reply WP “MGA Agreement.pdf.”). Simultaneously, the agreement provided for CSXT’s equal usage of the MGA, and for “equal access . . . through full use of the Monongahela to all current and future customer facilities located on or accessed from the Monogahela.” *Id.* at 2. The MUA recognizes CSXT’s continuing property interest in the lines of the MGA by providing that CSXT will pay “an equal share” (50%) of annual capital expenditures, in addition to a trackage rights fee to cover NS’ operating expenses. *See id.* §§ 9-11.<sup>145</sup> The facts that CSXT has equal access to the MGA lines and to all customers that can be accessed by those lines; and that CSXT pays one-half of annual capital expenditures (neither of which are typical features of a trackage rights agreement) evidence CSXT’s continuing property interest in the MGA lines, an asset for which it paid fair value in the Conrail transaction.

In order for the SFRR to “step into the shoes” of CSXT with respect to its rights (including extraordinary right of equal access to all shippers and customers) on the MGA, the SFRR must pay what CSXT paid to obtain those rights. Because the purchase of the MGA lines by NS and CSXT and the accompanying allocation of rights was merely one component of a complex transaction allocating myriad assets, rights, liabilities, and responsibilities of the former Conrail between and among co-

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<sup>145</sup> Having included no capital costs whatsoever in its Opening case, SECI for the first time on rebuttal adds CSXT’s annual MGA capital payments made to NS. Notably, SECI includes such payments only for the years 2007 and 2008, with an unexplained adjustment. *See* SECI Reb. WP “Exhibit III-H-1 Rebuttal.xlsm” tab Investment. Because CSXT’s obligation to pay for its share of the MGA capital maintenance expenditures is not limited to just 2007 and 2008 and extends into the DCF period, SECI’s addition falls far short of CSXT’s – and therefore SFRR’s – prospective MGA capital contributions. Even if SECI had correctly reflected CSXT’s MGA capital responsibilities, CSXT’s 2007 and 2008 capital contributions covered only program track work (*See* SECI Reb. WP “SFRR capital expenditures on MGA.xls”) and do not cover any non-track road assets.

purchasers NS and CSXT, it would be difficult to identify and isolate the precise value paid by CSXT for its rights in the MGA. This does not mean that CSXT did not pay for its right of equal access to the MGA, it simply means that it would require a disproportionately complex, time-and-resource-consuming effort to determine the exact “price” that CSXT paid for this asset among all of the intertwined and off-setting arrangements and allocations comprising the Conrail transaction. Instead, a fair proxy for CSXT’s capital investment in the MGA is the proportion of capital maintenance the parties agreed would be CSXT’s responsibility. The Agreement specifies that NS and CSX are to share equally such capital costs. *See* MUA Section 11. Accordingly, it is reasonable and appropriate to apportion to the SFRR an equal 50 percent share of the acquisition and construction cost of the MGA.<sup>146</sup>

#### **G. Positive Train Control**

The Board should include the capital investment and operations costs presented by CSXT for statutorily mandated Positive Train Control (“PTC”) systems. Because federal law and regulations unequivocally require the implementation of PTC systems by or before 2015, this is a cost the SFRR (which would be a Class I carrier that would transport TIH materials over most of its lines) would necessarily incur. *See* Rail Safety Improvement Act of 2008 (“RSIA”), 49 U.S.C. § 20157; “*Positive Train Control Systems, Final Rule*,” 75 Fed. Reg. 2598 (No. 10) (Jan. 15, 2010) (FRA final rule implementing PTC requirements of RSIA). Accordingly, CSXT – which just submitted its own PTC implementation plan to FRA in April 2010 – developed and presented costs for a PTC system to be

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<sup>146</sup> Because CSXT includes 50 percent of the investment required to replicate CSXT’s equal and unfettered access to the MGA in the DCF, which provides for both return of and return on that investment, CSXT did not add separately costs attributable to prospective capital replacements. Including only 50 percent of the prospective capital expenditures – as SECI did for the first time on rebuttal – fails to account for assets not routinely replaced such as earthwork, culverts, signals and bridges.

installed in 2014. *See* CSXT Reply III-C-107-10; CSXT Reply WP “SFRR CnS Spreadsheet Final.xlsx.”<sup>147</sup>

Based on its engineering witness’s speculation that “it is quite possible” that regulatory and statutory deadlines for implementation of PTC may be pushed back, SECI included *no PTC capital investment or expenses whatsoever* in its case-in-chief or rebuttal submissions. *See* SECI Open at III-C-62-64 (engineering witness speculating that on legal change to federal mandates, which would require act of Congress). This element of SECI’s SAC presentation thus depends entirely on the assumption that the SFRR will not comply with the safety mandates and requirements of federal statutes and FRA regulations. As CSXT demonstrated on Reply, SECI’s position is untenable and unprecedented: the fact that complying with a law may present challenges or may be costly is hardly an adequate basis for assuming the SFRR would violate the clear mandates of federal law. *See* CSXT Reply at III-C-107-10.

Moreover, subsequent events have shown the speculation of SECI’s engineer to be erroneous. While Mr. Reistrup speculated that carriers would not be able to meet the April 2010 deadline for submission of PTC implementation plans to the FRA, and the PTC implementation schedule would have to be delayed, the carriers (including CSXT) met that deadline. *See* CSXT Positive Train Control Implementation Plan (April 16, 2010); *cf.* SECI Open. at III-C-63. FRA issued a final rule and

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<sup>147</sup> On rebuttal, SECI complains that CSXT did not expressly include the amount of the PTC investment in the “Signals and Communications System Costs” table of its Section III-F Reply narrative, and instead accounted for the PTC cost in Section III-C and in its discounted cash flow analysis. *See* SECI Reb. at III-F-114. But CSXT did address PTC in the signals discussion of Section III-F, and explained that development and allocation of PTC costs were discussed in Section III-C. *See* CSXT Reply at III-F-88. The table SECI refers to accounts for signals and communications investments as of 2009, the first year of SFRR operations. *See* CSXT Reply Table III-F-17. Because the PTC system is not required to be in place until 2015, CSXT did not include it in Table III-F-17, which is intended to report capital investment in signals and communications at start-up. PTC investment at 2009 cost levels of \$52.3 million (before adding engineering and contingencies) is set forth in CSXT Reply Exhibit III-H-1 (“Construction \$” tab). CSXT’s placement of the PTC investment cost discussion and calculation has no effect on the accuracy of the calculation or the SAC analysis, and SECI does not suggest otherwise.

regulations governing PTC implementation in January 2010, and the rule became effective on or about March 15, 2010. See “*Positive Train Control Systems*,” 75 Fed. Reg. 2598 (Jan. 15, 2010).

Despite the issuance of final regulations, carriers’ submission of their implementation plans, and the statutory mandate for operational PTC systems by 2015, SECI continued to refuse to include any capital investment or costs for PTC in its rebuttal submission. See SECI Reb. at III-C-61-63. Thus, the only evidence regarding the cost of a statutorily mandated system, which SECI concedes current law would require the SFRR to install, is the evidence submitted by CSXT.<sup>148</sup>

Given the state of the evidence concerning the investment and expenses associated with the mandatory installation of PTC, there are two options available to the Board. It may adopt CSXT’s evidence as the best (indeed the only) evidence of record. Or it could dismiss the case because SECI has failed to submit evidence on an item of its SAC case as to which it bears the burden of proof. Beginning in 2015, federal law requires the SFRR to have an installed and functioning PTC system – failure to have implement such a system would constitute a violation of federal safety law and a concomitant failure to demonstrate SECI’s operating plan is feasible. See, e.g., *Coal Rate Guidelines*, 1

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<sup>148</sup> On rebuttal, SECI cites a recent Board decision in a simplified Three Benchmark proceeding. See *U.S. Magnesium, LLC v. Union Pacific R.R. Co.*, STB Docket No. 42114 (served Jan. 28, 2010). In *U.S. Magnesium*, the defendant carrier argued that the maximum reasonable rate should be increased to account for the carrier’s anticipated future costs of PTC. The Board refused to take such costs into account for two primary reasons, neither of which applies in this SAC case. First, the Board noted that the defendant had not yet invested in PTC systems, and the Board generally does “not require shippers to provide carriers a return on investments not yet made” in a Three Benchmark case. *U.S. Magnesium*, slip op. at 2. Indeed, given that the decision issued in January 2010 (the PTC deadline is December 31, 2015) and a Three Benchmark rate prescription lasts, at most, five years, the extent to which the defendant carrier might make PTC investments, during the prescription period, was not clear. Here, in contrast, there is no question that the statutory deadline for implementation will occur during the 10-year SAC analysis period, and the SFRR would be required to make capital investments to meet the 2015 deadline. Second, the Board found that “accounting for the PTC investment is an issue too complex to resolve *in a Three Benchmark proceeding*.” *Id.* at 17 (accounting for PTC investment costs in Three Benchmark cases would defeat purpose of making smallest cases “straightforward and inexpensive.”) (emphasis added). In this full SAC case, in contrast, there is no justification for ignoring a significant capital investment that all Class I carriers will be required to make.

I.C.C.2d 520, 543 (“The proponent of the SAC model must show that [its] alternative is feasible and could satisfy the shipper’s needs.”)

## **VI. CSXT CORRECTLY APPLIED THE BOARD’S DCF MODEL.**

There are significant differences between the parties as to the proper application of the Board’s DCF Model for determining whether the SFRR’s revenues would be sufficient to cover its capital and operating expenses. CSXT correctly applied the model, and its evidence demonstrates that the SFRR would encounter an \$824.7 million shortfall in Year One of its operation and a cumulative shortfall of \$4.943 billion by the end of Year Ten of the DCF analysis. See CSXT Reply at III-H-7 (as corrected in Feb. 2 Errata filing). Although there are a number of disagreements between CSXT and SECI about the appropriate method of implementing the Board’s DCF model, the sharpest disputes involve calculation of equity flotation costs, inflation indices for land assets, locomotive financing costs, calculation of income tax liability, and the appropriate treatment of the amortization of the debt component of the cost of capital and the ongoing stream of tax deductions generated by accelerated depreciation when the DCF is truncated after only 10 years.

### **A. Equity Flotation Costs**

Following the approach adopted by the Board in *AEP Texas*, CSXT calculated equity flotation costs for the SFRR of 0.04%, 0.10%, and 0.15% for 2006, 2007, and 2008, respectively. CSXT Reply at III-G-4, Table III-G-1. On Rebuttal, SECI argued that the Board’s ruling in *AEP Texas* – which, contrary to SECI’s contention, had nothing to do with “refinancing” – was “in error” (SECI Reb. at III-G-5) and that such costs should be excluded in this case (and by implication, in all SAC cases). But the Board clearly understood what it was doing in *AEP Texas*, and what it did was absolutely consistent

with the market reality that railroads and other entities must pay fees in connection with their issuance of equity – a cost that the SFRR would incur.<sup>149</sup>

#### **B. Inflation Indices for Land Values**

This is an issue that has not generated much disagreement in prior SAC cases, but the configuration of the SFRR chosen by SECI makes this a critical element here. Stated simply, the SFRR's lines and facilities are located in a large number of municipalities, with the result that over 90% of the SFRR's land value is in urban areas. See CSXT Reply at III-G-6. The flaws with SECI's development of real estate values for these urban areas are discussed above at pages 126-35. SECI developed its own land inflation index for purposes of this proceeding that, because of design and implementation flaws, concludes real estate prices will increase an average of 8.1 percent annually between 2006 and 2018.<sup>150</sup> SECI's euphoric but unsupported view regarding real estate inflation has two direct effects in the DCF model. First, because SECI incorrectly developed land prices at 2009 levels, the DCF decreases those values back to 2006 levels by reducing them 8.1 percent annually. As such, SECI witness Smith's \$921.1 million land valuation as of 2009 is reduced over \$160 million to \$758.6 million in the DCF. See SECI WP Ex. III-H-I Rebuttal xlsx, Tab "Investment." Second, SECI applies an ultra-high inflation rate for the 2009 through 2018 period, which has the effect of pushing off the vast majority of the land investment to years beyond the DCF period and further reducing the SFRR starting revenue requirements.

SECI's calculations of the land inflation index is flawed in three significant respects, none of which it addresses on rebuttal. First, SECI bases its index on historic trends in real estate prices between the years 2000 and 2008. As acknowledged by its own real estate witness, this period saw an

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<sup>149</sup> The Board explicitly stated that the method it approved in *AEP Texas* was "consistent with Board precedent and consistent with how debt flotation fees are reflected in the cost of capital." *AEP Texas* at 108.

<sup>150</sup> On opening, SECI calculated an index average of 8.4 percent annually.

unprecedented increase in real estate prices. The following quotations from Mr. Smith's report regarding real estate general market conditions are alone enough to impeach the credibility of SECI'S calculations:

- "As 2009 begins, investors are watching the value of their assets decline."
- "Prices of commercial real estate almost doubled between 2000 and 2007 and have since declined by more than 20 percent."
- "Along with the decline in construction, house prices have fallen by around 15 to 20% from their peak, depending on which measure you use. [For many markets this 'peak' is identified as early to mid-2008.]"
- "Real estate markets are expected to remain in the doldrums in most areas with only scattered, very tentative signs of stabilized markets being reported. Housing prices are predicted to continue to decline. Demand for commercial, industrial and retail space will likely continue to decline. Continued weakness is anticipated for agricultural producers in various areas of the country. Accordingly, it is our view that these other factors have had and will continue to have a downward, deleterious impact on land values."<sup>151</sup>

It is clear from the comments above that SECI witness Burris, who sponsors the development of SECI's land inflation index did not consult SECI's own real estate witness Stuart Smith regarding his decision to use historic trends in real estate prices from 2000 through 2008 as the foundation for his own made-for-litigation land index calculations.

Second, SECI weights its land index values based on acreages instead of land values. Because the source materials for the index calculations are based on changes in prices, and not changes in acreages acquired, and because the composite index is applied to estimated SFRR land values, the correct approach is to weight the index values by land values within each relevant territory.

Third, even though SECI included index values for 2009 in its work papers – which show a drop in prices between 2008 and 2009 – SECI ignored this relevant evidence in developing its index.<sup>152</sup>

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<sup>151</sup> SECI Open. WP "Land Valuation Report" at 88-89.

<sup>152</sup> SECI's valuation witness's own Report belies the validity of using an 8% plus annual land value inflator through 2018, as SECI's cost consultants assumed. See SECI Open. WP "Land Valuation

By contrast, CSXT's expert real estate appraisal witness recognized that, because of the recent bursting of the real estate bubble, historical trends cannot be used to predict prospective changes in real estate values. Accordingly, he developed a realistic estimate of a 2.5% average growth rate over the 10-year DCF period. *See CSXT Reply at III-G-5-7 and supporting workpapers.* This projection is indeed more optimistic – particularly in the short run – than the dire predictions espoused by SECI's own expert, which support either further reductions from 2008 peaks or flat prospective growth.

CSXT urges the Board to ignore SECI's repeated attempts to denigrate CSXT's expert's well-supported and realistic growth rate projection for land values as "made-for-litigation" forecasts. *See SECI Reb. at III-G-8, 11, 12.* The Board well understands – as do SECI's counsel and experts – that under the real annuity construct of the Board's DCF model, the higher the assumed inflation rate for the stand-alone railroad's assets, the more of the required capital recovery that is pushed back into the later years of the DCF period, thereby artificially suppressing the starting SAC capital revenue requirements. Given the extraordinary value of the land required for the SFRR, it is SECI's effort to postulate a mechanism calculated to defer a large portion of the SFRR's initial revenue requirements into the later years of the DCF and indeed on into perpetuity, that constitutes a "made-for-litigation" tactic.

### **C. Locomotive Financing Costs**

If the Board were to accept SECI's assumption that the CSXT equipment financing rates for locomotives are applicable, then the debt to equity ratio in the DCF needs to be adjusted so that the capital structure of the SFRR is consistent with that of the industry. The STB-prescribed debt as a percentage of capital is used in the SAC analysis to determine the amount of debt SFRR incurs and to calculate the composite cost of capital. In SECI's rebuttal evidence the weighted average of this

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Report.pdf" at 88-89 (concluding after recitation of negative effects of recession on real estate properties of all types that "it is our view that these and other factors have had and will continue to have a downward, deleterious impact on land values").

percentage during construction is 21.5%. However, as Table 9 shows, when the separate locomotive debt is added, the effective debt ratio becomes 25.8%. This higher debt ratio lowers the composite cost of capital for the SFRR below that for the railroad industry.

**Table 9**

	Investment	Debt	Debt Ratio
Road Property	\$5,526,415,456	\$1,188,179,538	21.5%
Locomotive	\$320,967,906	\$320,967,906	100.0%
<b>Total</b>	<b>\$5,847,384,362</b>	<b>\$1,509,147,444</b>	<b>25.8%</b>

To account for the impact of these locomotive assets that SECI assumes are acquired with 100 percent debt, a corresponding adjustment needs to be made to the debt to equity ratio used for the acquisition of road property assets in the DCF, in order to align the capital structure and cost of capital for the SFRR with the rest of the industry. The Board should make a simple adjustment to lower the Debt as a Percentage of total Investment in years 2006-2008 (column S in the Cost of Capital tab of the DCF model) by a constant percentage until the total debt equals the industry debt ratio. As shown in Table 10, the debt ratio in SECI's Rebuttal DCF for Road Property Investment must be reduced by 21.2% (from 21.5% to 16.9%) so that the overall debt ratio of the SFRR is 21.5%

**Table 10**

	Investment	Debt	Debt Ratio
Road Property	\$5,526,415,456	\$936,219,732	16.9%
Locomotive	\$320,967,906	\$320,967,906	100.0%
<b>Total</b>	<b>\$5,847,384,362</b>	<b>\$1,257,187,638</b>	<b>21.5%</b>

**D. Calculation of the SFRR's Income Tax Liability**

As CSXT explained in its Reply Evidence at III-G-7, SECI made several errors related to the calculation of the SFRR's income tax liability, including miscalculation of the tax credit associated with bonus depreciation – which SECI acknowledged and corrected on Rebuttal. See SECI Reb. at III-H-5. However, the parties disagree over the appropriate manner of implementing the 10-year DCF adopted by

the Board in *Major Issues*, with SECI truncating the DCF analysis by computing the terminal value of the SFRR at year 10 rather than year 20. SECI's approach inappropriately accelerates interest tax deduction benefits for all SFRR assets and tax depreciation deduction benefits for SFRR assets with depreciation tax lives in excess of 10 years, thereby reducing artificially the DCF-generated starting revenue requirement. This is neither an economically correct result nor one that the Board contemplated when it stated in *Major Issues* (at 65) that "The only changes to Table E necessary to accommodate a shorter 10-year analysis period are: (1) the elimination of forecasts for operating expenses in years 11 through 20 and (2) changing the netting calculations to compute the cumulative underage or overage at the end of year 10, instead of year 20." Moreover, SECI's approach not to discount interest and depreciation when truncating the DCF analysis at year 10 creates a flat inconsistency with the calculations made to compute the present value of the perpetual replacement of assets in the "replacement" tab of the DCF model.<sup>153</sup>

The Board should reject SECI's approach, which is contrary to the Board's expressed intent in adopting a 10-year DCF: only to simplify the mechanics of calculating a 20-year DCF, not to change the results generated by the DCF model. Alternatively, the Board should correct SECI's truncated model to reflect the appropriate timing of the prospective tax adjustments, consistent with the methodology used in the "Replacement" tab.

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<sup>153</sup> Those calculations discount the applicable tax benefits from interest over a full 20 years, and the tax benefits of depreciation over the full depreciable life of the assets – including 50 years for grading and tunnels – at the railroad industry's nominal cost of capital.

## **VII. THE BOARD SHOULD ACCEPT CSXT'S EVIDENCE ON REMAINING ISSUES**

### **A. The Board Should Dismiss SECI's Challenges to Paper Rates**

SECI has never shipped coal from three of the origins challenged in the Complaint – Bailey, GibCoal, and Charleston<sup>154</sup> – and the internal forecast it uses to support its SAC evidence does not contemplate any shipments from those origins during the SAC analysis period. *See* CSXT Reply at I-10-11; SECI Open. Ex. III-A-2 at 1 (lines 10-15). As CSXT explained in its Reply Evidence, the Board should dismiss SECI's challenges to rates that – if its own evidence is to be believed – would be paper rates that never move traffic. Further, it would be a huge waste of the Board's scarce resources to permit challenges to rates that the shipper itself predicts it will not use.

SECI's arguments for why it should be permitted to pursue challenges as to these origins lack any merit. SECI first argues that there is no requirement that a complainant in a rate case "use . . . the transportation service subject to a challenged rate." SECI Reb. at I-11. SECI does not dispute that the "charged or collected" requirement of 49 U.S.C. § 10704(a) logically means that the shipper must use or intend to use the challenged rate. Instead, it argues that § 10704(a) only applies to the Board's authority to prescribe rates, and that the Board's authority to determine the reasonableness of rates is unbounded by whether the rates are actually used by the complainant. *Id.* But even if SECI were correct that § 10704(a) only affects the Board's jurisdiction over rate prescriptions, the only relief that SECI is seeking for these three origins is a rate prescription.<sup>155</sup> Because § 10704(a) prohibits the Board from prescribing rates unless a complainant demonstrates the unreasonableness of a rate that has been

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<sup>154</sup> SECI has received petcoke from Charleston in the past, but no petcoke has moved to SGS from Charleston since 2007. SECI has never received coal from Charleston. And, SECI's verified SAC presentation represents that no shipments will move over the ten-year DCF period.

<sup>155</sup> Since no traffic has ever moved under these challenged rates, SECI plainly could not seek reparations for them.

“charged or collected,” the Board does not have authority under the statute to prescribe rates from origins from which SECI has not received traffic and does not project receiving traffic.

Indeed, there is longstanding agency precedent against prescribing rates in the absence of evidence that a shipper plans to use them in the future. *See, e.g., Fed. Chem. Co. v. Baltimore & Ohio R.R.*, 210 I.C.C. 577, 578 (1935) (“There is no evidence that there will be any future shipments over that route and, therefore, we will not prescribe a rate for the future over that route.”); CSXT Reply at I-10 (citing other cases). SECI does not attempt to reconcile its position with *Federal Chemical* or any of the other precedent cited in CSXT’s Reply – instead, it simply ignores them.

SECI’s second argument is that it was inappropriate for CSXT to “attach[] great weight to the coal volume forecast used in SECI’s Opening Evidence to project future volumes for SGS,” in which SECI projected that its entire coal needs over the 10-year SAC analysis period would be fulfilled from Epworth, Cardinal 9, Cimarron, Consol 95, and Dotiki. SECI Reb. at I-12. SECI spends over a page attempting to argue that it only intended to forecast aggregate volumes and not volumes from specific origins. This self-serving reinterpretation is contradicted by the fact that the forecast itself is specifically broken down by origins.<sup>156</sup> Nothing in that forecast, {

,} supports SECI’s counsel’s creative arguments that it was not intended to predict which individual origins might supply coal to SECI in the future. Moreover, SECI *still* has not made any commitment to ship coal over these lanes. All SECI will say is that it “anticipates that it *might*” move coal from all the origins in the complaint. *Id.* (emphasis added). Such an indefinite statement is not sufficient under § 10704(a) to support a rate prescription.

SECI attempts to brush aside the Board’s decision in *AEPCO*, claiming that CSXT did not “read [it] properly.” SECI Reb. at I-14 n.15. Read properly, *AEPCO* means what it says – the Board denied a

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<sup>156</sup> *See* SECI Open. WP “Coal Traffic Forecast.xlsx” at the “Seminole Forecast” tab (showing zero shipments from Charleston, Bailey, or Gibcoal during ten-year SAC analysis period).

motion to dismiss origins that had not been used to ship coal because it found that the complainant “has since moved at least one trainload of coal from the PRB, and . . . states that it intends to acquire additional PRB coal.” *AEPCO* at 2. The Board’s reliance on the *AEPCO* complainant’s use and stated intent to use the challenged rate directly contradicts SECI’s claim that it can challenge rates it has never used and does not forecast using. And SECI’s claim that *TMPA II* is “on point” ignores the critical distinction between *TMPA II* and this case. There the complainant challenged a single rate for PRB coal that applied to sixteen separate (but geographically proximate) mine origins. *TMPA II* at 832 (setting forth single tariff rate applicable to all origins). Thus there was no question that the challenged rate had been “charged and collected” when *TMPA* used the rate to receive coal from one of the complaint origins. Moreover, the issue in *TMPA II* was not that the shipper had never stated an intent to use the challenged rate; it was whether the Board could prescribe a rate without a prior determination of the R/VC jurisdictional threshold. *Id.* at 830.

In short, because SECI has neither used the challenged rates from Bailey, GibCoal, and Charleston nor forecast using those rates during the DCF period, the Board should dismiss these origins from the case.

**B. The Board Should Accept CSXT’s Proposed Operating Characteristics**

CSXT does not contest that, using the challenged rates and 2008 URCS system average variable costs, each of the issue movements generates R/VC ratios in excess of the quantitative market dominance threshold of 49 U.S.C. § 10707(d)(1). In the event that the Board calculates variable costs for other purposes, the Board should accept CSXT’s operating characteristics. For each of the three disputed operating characteristics – traffic class for Epworth movements, lading weight, and car ownership – SECI provided almost no support for its position on Opening, and instead saved its arguments for Rebuttal. *Compare* SECI Open. at I-13-14 *with* SECI Reb. at II-2-12. The Board should

not consider this untimely evidence. Regardless, SECI's arguments should be rejected for the reasons discussed at CSXT Reply II-4-15.<sup>157</sup>

**C. The Board Should Adhere to Its Regulations on Interest**

In the unlikely event that the Board ordered any reparations in this case, interest on such reparations should be calculated in accordance with the Board's regulations. SECI's arguments to the contrary should be rejected for the reasons detailed at CSXT Reply I-40-43.

**VIII. CONCLUSION**

As summarized above and shown in CSXT's Reply Evidence, SECI has failed to establish that CSXT is market dominant over the transportation at issue, and this case should be dismissed for lack of jurisdiction. CSXT's Reply Evidence further demonstrates that a proper application of the Stand Alone Cost test shows that the challenged rates are well below maximum reasonable levels and that SECI is entitled to no relief whatsoever.

Respectfully submitted,



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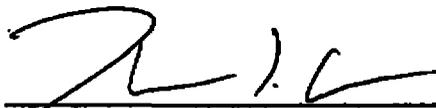
Dated: June 4, 2010

<sup>157</sup> SECI's citation of the Board's decision approving CSXT's sale of the assets that became the EVWR as evidence for treating the two carriers as a single entity is nothing short of bizarre. See SECI Reb. at II-4. CSXT and EVWR are separate carriers, and the Board has and should continue to treat them as such.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of June, 2010, I caused copies of CSX Transportation, Inc.'s Brief to be served by hand-delivery on the following counsel for Complainant Seminole Electric Cooperative, Inc.

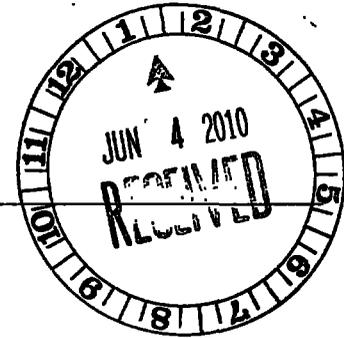
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BEFORE THE  
SURFACE TRANSPORTATION BOARD



SEMINOLE ELECTRIC COOPERATIVE, INC.

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant.

Docket No. 42110

EXECUTIVE SUMMARY TO  
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## EXECUTIVE SUMMARY

Seminole Electric Cooperative, Inc. (“SECI” or “Seminole”) has proposed unprecedented modifications to the Board’s rules and procedures for stand-alone cost (“SAC”) cases. At every turn SECI proposes shortcuts, cost “surrogates,” “simplifying” assumptions, and other breaches of the Board’s rules. These tactics are necessary to posit a 2,100-mile SARR that has a traffic group of unprecedented complexity – including 555,107 carloads of merchandise traffic and 707,082 intermodal units – and yet that achieves fantastic operating efficiencies. Applying an array of nonsensical and unsubstantiated shortcuts, assumptions, and simplifications, SECI concludes that in its first year of operations the Seminole Florida Railroad (“SFRR”) would need only \$289 million of expenses to generate *\$1.04 billion* in revenues. That number sounds too good to be true – because it is. SECI’s “simplifying assumptions” include assumptions that:

- Its stand-alone railroad does not need to develop an operating plan or demonstrate its feasibility;
- The SFRR would move nearly 1.9 million loaded and empty merchandise cars without performing a single freight classification;
- The SFRR may rely on “surrogates” for the actual forward-looking costs derived from an operating plan designed to serve the SFRR’s selected traffic group; and
- CSXT would be required to tender to the SFRR, and pay for, over 1.3 million units of what it calls “non-revenue” traffic (*i.e.*, CSXT’s own traffic for which the SFRR would serve primarily as a bridge carrier) – even though over 60% of those cars are *empties* (including empties for the SFRR’s own traffic!), even though this unprecedented arrangement would result in significantly worse service for many of the movements SECI labels “non-revenue traffic,” and even though it defies credulity to believe that CSXT would enter into such a disadvantageous relationship with the SFRR.

These examples are just the tip of the iceberg. At almost every turn, SECI has adopted self-serving assumptions that are unreasonable and/or squarely at odds with SAC principles and with this Board’s precedents – often proclaiming them falsely to be consistent with Board decisions in prior SAC cases.

As this Brief and CSXT's evidence make clear, the flaws in SECI's evidence, including its simplistic and untenable assumptions and simplifications, are fundamental. They do not merely concern disputes between the parties concerning the appropriate level of assorted costs or revenues associated with certain components and details of a SAC analysis (though there are disputes about such matters as well). Rather, these disputes concern the fundamental nature of the Board's stand-alone cost test and methodology. These elemental issues include, for example:

- Whether a complainant is required to meet its burden of proof with respect to presenting and supporting a complete and sufficient SAC presentation, or if the Board will excuse fundamental failures of proof;
- Whether any party may satisfy its obligations and burdens concerning essential elements of a SAC case by merely assuming them away, *i.e.*, relying on unsupported assumptions, simplifications, and suppositions rather than specific and properly supported actual evidence;
- Whether, as the Board has consistently required since the adoption of *Coal Rate Guidelines* in 1985, a complainant must present a detailed operating plan tailored to the specific traffic group it selected for its SARR;
- Whether the complainant's failure to present an actual operating plan – an indispensable element of a SAC presentation – is such a pervasive failure of proof that a case must be dismissed for failure of proof;
- Whether a complainant will be allowed to assume it could somehow force the incumbent railroad to allow the SARR to carry large volumes of the incumbent's residual carload traffic when the incumbent would not agree to such an arrangement with a foreign carrier in the real world;
- Whether the Board's clearly articulated, established rules and requirements for various elements of a SAC case (*e.g.*, re-routed crossover traffic) mean what they say and will be enforced, or may be ignored by parties with impunity.

These and several other issues presented in this case are central to the application of the SAC test and its continuing validity and soundness. If accepted, the radical, fundamental changes in SAC cases advocated by SECI (both expressly and implicitly) would sever the process (both here and in future cases) from sound economics, and render the results incoherent and arbitrary.

There is a powerful reason motivating SECI's radical approach and tactics. A straightforward application of SAC principles – like that set forth in CSXT's Reply Evidence – shows that the SFRR's costs would far exceed its revenues. CSXT's evidence demonstrates conclusively that the costs to construct, operate and maintain a feasible SARR that could handle SECI's selected traffic far exceed the revenues that the SFRR would generate in every year of the 10-year discounted cash flow ("DCF") analysis – by a cumulative amount of approximately \$5 billion over that period. *See* CSXT Reply Ex. III-H-1.

It is not surprising that a proper SAC analysis proves by such a wide margin that CSXT's rates are reasonable. As demonstrated in CSXT's Reply Evidence and summarized below, the challenged rates are constrained by effective intermodal competition. CSXT faces real, feasible, and economically effective competition on transportation from each of the Complaint origins to SECI's Seminole Generating Station ("SGS") from rail-water and truck-water alternatives. The Board need not and should not reach the SAC evidence in this case, because SECI has failed to establish that CSXT has market dominance over the issue movements. Therefore, the Board should conclude that it does not have jurisdiction over the challenged rates. But if the Board does reach the parties' SAC evidence, a proper application of SAC principles demonstrates that the challenged rates are reasonable.

This Brief summarizes the important differences in the parties' evidence and the most critical issues that are presented for the Board's decision in this case. Because CSXT has focused on the most important issues, this Brief does not reiterate many points discussed in its Reply Evidence.<sup>1</sup> Even so, a thorough summary of the issues presented in this case requires substantial discussion, due both to the many disputed issues in this case and to SECI's decision to present far more extensive arguments and

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<sup>1</sup> CSXT incorporates and reaffirms all the arguments set forth in its Reply Evidence. Where CSXT does not further discuss an error or correction in this brief, CSXT's position remains the same as on Reply.

evidence on Rebuttal than it did on Opening.<sup>2</sup> To assist the Board's review of this case, CSXT presents this Executive Summary of the Brief.

Section I of this Brief discusses the compelling evidence that SECI has competitive alternatives to CSXT's rail service. CSXT's Reply Evidence presented expert testimony and analysis showing that SECI has viable competitive rail-water and truck-water alternatives to CSXT's all-rail service from each of the Complaint origins. Indeed, in many respects CSXT's experts' analysis accorded with that in a pre-litigation study of transportation alternatives commissioned by SECI itself. There is no question that SGS, located in Palatka, Florida on the navigable St. Johns River, is accessible to water-delivered coal. CSXT demonstrated that most Florida utilities and many businesses near SGS rely on barge service, and that SECI itself used barge-rail service to receive coal for many years. Indeed, one reason SECI selected the site of SGS was its location on the banks of a commercially navigable waterway. *See* CSXT Reply at II-18-19 & n.18. There is no reason SECI could not do what other Florida utilities do. Its ability to employ a water transportation option is an effective competitive alternative to CSXT's service that precludes a finding of market dominance.

SECI's belated attempts to argue that CSXT possesses market dominance over the subject movements are not convincing. After addressing market dominance in only the most cursory manner on Opening – when it was obligated to present its entire case-in-chief under the Board's rules – SECI realized how effectively CSXT had laid out the facts and adopted an “everything-but-the-kitchen-sink” approach to market dominance on Rebuttal. *Compare* SECI Opening at II-11-14 (3½ pages on water transportation); *with* SECI Reb. at II-18-76; Exs. II-B 1 & 2 (58 narrative pages and two consulting firms' testimony on water transportation). But even if the Board were to consider this untimely evidence (and it should not), SECI cannot avoid the reality that it has viable competitive alternatives to

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<sup>2</sup> SECI's Rebuttal Narrative is far more lengthy than its Opening. *Compare* SECI Opening (405 narrative pages) *with* SECI Rebuttal (605 narrative pages).

CSXT's rail service. As illustrated in this Brief, SECI's claims that water transportation to SGS is not feasible are rife with mischaracterizations – many of which are squarely contradicted by statements made by SECI or its experts before this litigation began. *See infra* at 18-22: Similarly, SECI's claims that water transportation would not be cost-effective are predicated on transparently incorrect distortions of the relevant costs. *See infra* at 23-27.

Section II addresses perhaps the most important question presented by the SAC evidence – the generation of an operating plan. This case differs from most SAC cases, in that the Board is not being asked to choose between two competing operating plans. Here, only CSXT has proffered a true operating plan – an actual train and car service plan designed to perform all of the operations necessary “to meet the transportation needs of the traffic the SARR proposes to serve.” *Xcel* at 23. SECI, by contrast, has failed to model any of the extensive local and switching operations necessary to serve the SFRR's general freight and intermodal customers. Instead, it proposes simply to “adopt” historical CSXT trains as “SFRR trains” (even though the majority of the cars on those historical trains are not in SECI's selected SFRR traffic group) and to use “surrogates” to estimate the costs of serving SFRR customers.

Put differently, rather than devise and demonstrate the feasibility of a plan for the SFRR's operations that would properly serve the SFRR's customers, SECI's consultants propose that the Board accept an “operating plan” that is nothing more than an arithmetical exercise based upon “surrogate” costs. SECI does not detail how (or where) the SFRR will perform intermediate switching, how it will accommodate pickups and setoffs at customer facilities, or how the SFRR's local and yard train operations would impact its overall network capacity, equipment requirements, and personnel needs. Section II demonstrates that SECI's gimmicks utterly fail to present a feasible operating plan for the SFRR. *See infra* at 33-57. The only feasible operating plan for the SFRR is CSXT's operating plan, and

the Board must accept it or dismiss the Complaint due to SECI's failure to carry its burden of proof on a central requirement of the SAC procedures. *See infra* at 58-63. Moreover, the Board should forcefully reject SECI's tactic of relying upon simplistic assumptions and arithmetic instead of developing an operating plan. SECI's unprecedented tactic dramatically departs from the Board's SAC principles, and the Board should make clear that Complainants that elect to include significant volumes of intermodal and merchandise traffic on their proffered SARRs must create "detailed operating plan[s]" that are "specifically tailored to serve [the SARR's] traffic group," including construction of the yards, sidetracks and other facilities needed to support trains handling this traffic. *Xcel* at 598.

Section III addresses issues relating to the traffic and revenues for the SARR. As it did in its operating plan, SECI's traffic evidence violated the Board's clear rules and requirements governing SAC cases and analysis. For example, SECI proposed widespread off-SARR reroutes of crossover traffic without even attempting to meet the Board's exacting evidentiary burden to justify those presumptively invalid reroutes. SECI's protests to the contrary in its narrative evidence are belied by its exhibits and workpapers, which clearly show that it proposed off-SARR reroutes between no fewer than 183 origin-destination pairs on Opening. *See infra* at 64-75. SECI also offered grossly inflated coal volume projections, which the Board should correct by using the most recent Energy Information Administration Annual Energy Outlook. *See infra* at 75-80.

Section IV addresses major disputes regarding operating expenses. SECI's evidence is replete with distortions. SECI's ludicrous assumptions (i) that the SFRR would be paid a "merchandise line haul credit" for moving hundreds of thousands of empty cars; and (ii) that a "surrogate" switching cost can substitute for an actual operating plan result in significant underestimates of operating expenses. Even if one assumes for the sake of discussion that SECI's methodological inventions are valid – and they plainly are not – SECI grossly overstated the "line haul credit" by including empty cars and

significantly understated its surrogate switching costs by undercounting the number of switches the SFRR would have to perform. *See infra* at 96-100. Indeed, SECI failed to count over 1.5 million switches. *See infra* at 100. Other examples of SECI's significant underestimates of operating expenses include the following:

- SECI proposes that the SFRR would have general and administrative (“G&A”) expenses three times lower than those of any comparable real-world railroad. It does this even though the SFRR’s complexity and traffic mix would require G&A staffing much more akin to real-world railroads than to the coal-only SARRs in most recent SAC cases. *See infra* at 105-09.
- SECI can only “support” this unreasonable G&A estimate with misrepresentations and ridiculous assumptions – such as that the SFRR’s customer service representatives would be ten times as efficient as those for a comparable real-world railroad. *See infra* at 111.
- SECI claims that SFRR executives would have compensation packages “comparable and competitive” to those of KCS executives, but it proposes to pay SFRR executives less than a third of what their counterparts at KCS are paid. SECI refuses to include either bonus payments to KCS executives or stock awards that – contrary to SECI’s representations – are accounted for as expenses by KCS. *See infra* at 112-14.
- SECI posits that the SFRR would have an absurdly low attrition rate of only 3% – a rate that would mean the average tenure of a SFRR employee would be 33 years. Its only support for that figure are extrapolations from outdated magazine articles. CSXT, on the other hand, based its attrition rate on a contemporary third-party benchmark. *See infra* at 114-15.
- SECI claims that the SFRR’s maintenance of way workforce would be *twice as efficient* on a track-mile basis as the MOW workforces accepted by the Board in recent cases. Its evidence is utterly devoid of any reason to believe that the SFRR’s workforce could be more efficient than those in *WFA*, *AEP Texas*, and *Otter Tail* – let alone twice as efficient. *See infra* at 116-21.
- As for insurance expense, SECI abandons its Opening position that the SFRR’s insurance expenses would be comparable to those of CSXT. But it replaces that unreasonable position with an even more ridiculous claim that the SFRR is “comparable” to major Canadian transcontinental railroads and that a one-time Canadian National accounting adjustment that resulted in negative insurance expenses should be used to artificially depress SFRR insurance costs. *See infra* at 121-23.
- SECI does not dispute (as it cannot), that nine of the jurisdictions the SFRR traverses apply the “unit method” to calculate ad valorem tax for railroads, and that a perfectly

efficient SARR would have a higher “unit value” – and higher ad valorem taxes in unit method states – than a real world railroad. But it does not provide any unit method calculation of its own, and instead only relies on a transparently flawed critique of CSXT’s unit method calculation. *See infra* at 123-25.

Section V of the Brief addresses the significant errors in SECI’s road property investment evidence that caused it to understate road property expenses by approximately \$4.75 Billion. SECI’s most significant error is a gross understatement of the cost of real estate the SFRR would need for its right-of-way. The SFRR would traverse some of the most expensive real estate in the country – including the Washington, DC metro area, Atlanta, Richmond, Nashville, Charleston, Savannah, and Jacksonville – and as a result it would need significant capital to acquire the real property required for its rail system in such areas. SECI resorts to a series of gimmicks to depress real estate prices, including the following:

- Valuing property as of January 1, 2009 – 2 ½ years after the date the SFRR would acquire land – in a transparent attempt to take advantage of a collapse in real estate prices that occurred long after the SFRR would have had to acquire the necessary property (*see infra* at 131-32);
- Applying an unsupported blanket 15-20% deduction to all its valuations (totaling \$132 million) – a deduction that SECI buried in a spreadsheet without any narrative or expert explanation (*see infra* at 132);
- Using overly large valuation units (with an average length of 7.5 miles) and failing to use the Board’s across-the-fence methodology to properly value properties along the right-of-way. *See infra* at 128-31.

SECI also massively underestimates roadbed preparation costs. It does so largely by asking the Board to reverse its settled precedent of using the real world costs of earthwork and excavation preparation from the R.S. Means Handbook and instead to use earthwork unit costs from a single 7,000 foot railroad line relocation project in rural Tennessee to estimate earthwork unit costs to the entire 2,100 mile SFRR system, without regard to terrain and other variables. CSXT’s evidence demonstrates that the special circumstances of the small, isolated siding relocation project SECI relies on make it an inapplicable measure of earthwork costs on the widely varied terrain of the SFRR. *See infra* at 136-37.

SECI furthermore failed to include sufficient track and facilities to serve the SFRR's customers. Its assumption that 83 industrial leads of only 33 feet each would suffice to serve the SFRR's 884 customer locations is patently unreasonable. *See infra* at 137-38. SECI's estimate of the SFRR's bridge costs is replete with errors, and it failed to account for the necessary costs of constructing the Monongahela Railroad lines over which the SFRR would operate. *See infra* at 138-48. Finally, SECI fails to include any costs for implementation of statutorily mandated Positive Train Control systems, based on speculation that Congress might change this statutory requirement before it becomes effective. *See infra* at 148-51.

Section VI addresses several critical flaws in SECI's application of the Board's discounted cash flow ("DCF") model. For example, SECI unreasonably assumes that the SFRR's real estate values will increase an average of 8.1 percent annually between 2006 and 2018 – an assumption flatly contradicted by testimony in this proceeding by SECI's own real estate witness. *See infra* at 152-54. And SECI distorts the DCF analysis by inappropriately accelerating interest tax deduction benefits and tax depreciation deduction benefits, thereby artificially reducing the DCF-generated starting revenue requirement for the SFRR. This approach is neither economically correct nor consistent with the Board's instructions in *Major Issues*. *See infra* at 155-56.

Section VII addresses several remaining issues, including the fact that SECI has inappropriately challenged three rates that it has no intention of using. Three of the eight origins named in the Complaint shipped no coal (or petcoke) to SECI during the two years preceding filing of the Complaint, and SECI's own verified evidence shows that it does not project any traffic moving from those origins to SGS at any point during the ten year DCF period. Accordingly, challenges to rates from those origins – Bailey Mine, Gibcoal and Charleston, SC– must be dismissed from the case. *See infra* at 157-59.

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CSXT's evidence demonstrates that there is effective competition for the issue movements, and the Complaint should be dismissed for lack of jurisdiction. But should the Board determine that it has jurisdiction, a proper application of the Board's rules to calculate the stand-alone costs and revenues of the SFRR conclusively demonstrates that the challenged rates are below a reasonable maximum and that SECI is entitled to no relief whatsoever.