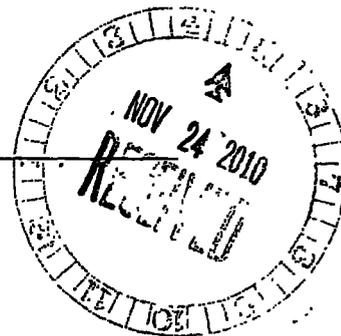


228327

**PUBLIC VERSION**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**



TOTAL PETROCHEMICALS USA, INC.

Complainant,

v.

CSX TRANSPORTATION, INC.; CAROLINA  
PIEDMONT DIVISION; GEORGIA  
WOODLANDS RAILROAD, LLC; MADISON  
RAILROAD; MOHAWK ADIRONDACK &  
NORTHERN RAILROAD CORP.; NASHVILLE &  
EASTERN RAILROAD CORP.; NEW HOPE &  
IVYLAND RAILROAD; PIONEER VALLEY  
RAILROAD; R.J. CORMAN RAILROAD  
COMPANY (MEMPHIS); SEMINOLE GULF  
RAILWAY L.P.; SEQUATCHIE VALLEY  
RAILROAD COMPANY; AND SOUTH BRANCH  
VALLEY RAILROAD

Defendants.

Docket No. NOR 42121

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Public Record

**CSX TRANSPORTATION, INC.'S REPLY IN OPPOSITION TO SECOND MOTION  
TO COMPEL OF TOTAL PETROCHEMICALS USA, INC.**

The Second Motion to Compel ("Second Motion") filed by Total Petrochemicals USA, Inc. ("TPI") in this proceeding has as little merit as the first. Like TPI's First Motion to Compel demanding production of internal costing information that the Board has long held to be irrelevant and nondiscoverable, its Second Motion is characterized by a complete failure to satisfy the prerequisite for any motion to compel: to "demonstrate a real, practical need for the information" requested. *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520, 548 (1985) ("*Guidelines*"). TPI's inability to meet its burden is not surprising. TPI has posed many hundreds of discovery requests, and CSXT has produced hundreds of gigabytes of data and over 45,000 pages of documents in response to those requests. Because CSXT has only objected to requests that plainly are irrelevant, call for privileged information, or otherwise seek information

not discoverable in a SAC case. TPI's Second Motion demands information that is far outside the scope of appropriate discovery. TPI insists on access to irrelevant Sensitive Security Information ("SSI"), demands production of ten-year-old RTC studies that have no conceivable utility in developing or testing a SARR in this case, and even attempts to bolster its Motion by pretending that CSXT has refused to produce certain information that TPI first demanded on October 27 (after the close of discovery) when CSXT has done no such thing. Despite its rhetoric, TPI's motion boils down to requests for a few categories of information to which it is not entitled and that CSXT told TPI long ago CSXT would not produce; and complaints that at the time TPI filed its motion CSXT had not yet completed production of supplemental information that TPI demanded on October 27.

Moreover, TPI's extraordinary delay in filing this motion to compel – which was filed a month after the scheduled close of discovery, two-and-a-half months after the date to which CSXT agreed to extend the deadline for filing motions to compel, and four months after CSXT asserted most of the objections TPI challenges in the Second Motion – is alone sufficient grounds to deny the Motion. Indeed, the fact that TPI waited to file this untimely and unmeritorious motion until November 16 – thus under 49 C.F.R. § 1114.31(a)(2) making CSXT's Reply due on November 26, the day after Thanksgiving – raises questions about TPI's motivation for filing this motion.

**I. TPI'S CLAIMS ABOUT THE PROPER SCOPE AND CURRENT STATUS OF DISCOVERY IN THIS PROCEEDING ARE UNFOUNDED.**

The Second Motion includes several substantial mischaracterizations that require correction before CSXT addresses the individual discovery responses challenged in the Second Motion. First, the Second Motion's claim that the extraordinary and unprecedented nature and scope of TPI's discovery requests is justified entirely by the fact that the issue commodities are

plastics and not coal is not credible. TPI has filed seven sets of discovery requests that total 872 discovery requests including subparts,<sup>1</sup> and as CSXT demonstrated in its Reply to TPI's first motion to compel, many of TPI's requests are far outside the range of appropriate SAC discovery. *See* CSXT Reply to Mot. To Compel, at 4-5 (filed Nov. 15, 2010). The Board can judge for itself how reasonable it is for TPI to demand production of internal costing data that has been repeatedly found to be outside the scope of proper discovery, *see id.* at 5-8; to demand "working copies" of over a dozen separate computer programs. *see* Request for Production ("RFP") Nos. 26, 28, 154 (Second Mot. Ex. 1 at 42-44, 126-27); to seek production of the entire highly confidential discovery and evidentiary record in a different case,<sup>2</sup> *see* RFP No. 152 (Second Mot. Ex. 1 at 124); and to demand detailed information and documents relating to CSX's business relationships with one hundred forty-five different railroads, *see* Interrogatory No. 6 & RFP No. 17 (Second Mot. Ex. 1 at 13-14; 34-35). None of these improper requests could be justified by the fact that this case involves plastics shipments. As demonstrated below, the TPI discovery demands at issue in this motion – *e.g.*, that CSXT violate federal regulations

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<sup>1</sup> TPI's *modus operandi* for this litigation has been to treat any response to an interrogatory or request for production as inadequate and unsatisfactory until all responsive data or information has been produced for every subpart to that discovery request. Consistent with that approach, each "subpart" is properly treated as a separate discovery request. *Cf.* Second Mot. at 14 (moving to compel production of data responsive to one subpart of seven-subpart request for production).

<sup>2</sup> TPI's claim that its demand in RFP 152 that CSXT produce the entire discovery and evidentiary record and submissions in *Seminole Electric Cooperative, Inc. v. CSX Transportation, Inc.* was only intended "to ease the discovery burdens upon both parties" is not credible. *See* Second Mot. at 6 n.5. In the first place, RFP 152 demanded not just a copy of the discovery record from *Seminole* but also "[a] copy of CSXT's confidential/highly confidential Reply evidence and any errata, including all electronic files, data bases and workpapers supporting that filing." Second Mot. Ex. 1 at 124. It is not clear why TPI wanted to see CSXT's highly confidential reply to *Seminole*'s evidence, but it certainly was not to "ease discovery burdens." Moreover, TPI's discovery requests and *Seminole*'s discovery requests cover different time periods (with *Seminole* generally asking for data from 2006-2008), and therefore producing outdated *Seminole* data to TPI would have done very little to ease CSXT's burden of responding to TPI's discovery requests.

by giving TPI Sensitive Security Information and that CSXT produce 53,000 invoices that duplicate information already produced to TPI – are further examples of unnecessary and improper discovery.

Second, and more importantly, TPI's claim that "CSXT is continuing to produce information to TPI even now . . . without providing any clear indication as to when its production will be completed" is incomplete and misleading. Second Mot. at 3. CSXT's production of documents and data in response to the discovery requests TPI posed within the discovery period is complete, and has been for some time.<sup>3</sup> But while under the Board's schedule discovery was to close on October 15, TPI's new discovery requests did not stop on that date. Since October 15, TPI has sent no fewer than 16 letters posing 129 requests purporting to "follow up" on CSXT's discovery. While some of these letters raise legitimate questions that are to be expected given the considerable amounts of data that CSXT has produced, many are improper attempts to obtain further discovery. For example, TPI has demanded production of several decades-old purchase or sale agreements for lines that are not part of the CSXT network, that have no apparent relevance to this case, and that are not responsive to any formal TPI discovery request. *See, e.g.,* Reply Ex. 3 (Nov. 2, 2010 Letter from J. Moreno to P. Hemmersbaugh).<sup>4</sup>

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<sup>3</sup> In an apparent attempt to bolster the Second Motion's claim that CSXT's production remained incomplete, the day before TPI filed the Second Motion it sent CSXT a letter identifying seven discovery requests to which TPI claimed CSXT had not fully responded. *See* Reply Ex. 1 (Nov. 15, 2010 Letter from J. Moreno to P. Hemmersbaugh). In fact, CSXT had fully responded to these requests, as demonstrated in CSXT's November 19, 2010 reply to TPI's letter. *See* Reply Ex. 2 (Nov. 19 Letter from M. Warren to J. Moreno). While CSXT's responses to TPI's discovery requests are complete, CSXT recognizes its responsibility to supplement its production should it identify additional responsive information. *See* 49 C.F.R. § 1114.29.

<sup>4</sup> TPI's assertion in its November 2 letter that decades-old purchase and sale agreements were responsive to RFP 17 is incorrect. *See* RFP 17 (Second Mot. Ex. 1 at 34-35) (requesting agreements between CSXT and other railroads "that refer or relate to the pricing and handling of all commodities").

Nevertheless, in an effort to minimize disputes, CSXT is responding to TPI's post-discovery requests, and in some instances CSXT expects that its responses to these letters will involve production of additional documents or data.<sup>5</sup> This process is complicated by the fact that TPI continually sends new requests; for example, on Friday November 19 TPI sent three separate letters that included 27 distinct requests. Most of these requests relate to documents and data produced much earlier in the discovery process. *See. e.g.*, Reply Ex. 4 (Nov. 19, 2010 Letter from D. Benz to P. Hemmersbaugh) (asking questions about documents produced September 17, 2010).

In short, TPI has no one but itself to blame for the fact that CSXT continues to answer questions that TPI posed after the close of discovery. TPI's demand that the Board impose a "date certain" for CSXT to complete its production in order to enable "the expeditious processing of this proceeding" is ridiculous. Second Mot. at 21. The only party whose post-discovery conduct could threaten "the expeditious processing of this proceeding" is TPI, through its flood of post-discovery requests and through this grossly untimely motion.

## **II. THE BOARD SHOULD DENY THE MOTION BECAUSE OF TPI'S UNJUSTIFIED DELAY IN BRINGING IT.**

The Board should deny the Second Motion for the separate and wholly valid reason that TPI has plainly failed to bring it within the time period required by the Board's regulations. Not only did TPI not bring its motion within the ten-day period mandated by 49 C.F.R. § 1114.31, it waited to file its motion until a month after the close of discovery and over four months since CSXT asserted many of the objections TPI now claims are unjustified. Even if the Board's regulations did not demand denial of TPI's untimely motion (and they do), TPI's

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<sup>5</sup> For example, on November 12, 2010 TPI identified for the first time hundreds of CSXT contracts and joint facility agreements that TPI wishes to review. CSXT will be producing documents in response to that request.

inordinate delay in bringing a motion to compel that contests objections that CSXT asserted over four months ago is more than sufficient reason to deny the Second Motion.

In order to expedite the resolution of discovery disputes, the Board's rules require parties to bring disputes to the Board's attention promptly. Specifically, 49 C.F.R. § 1114.31(a) requires parties to bring motions to compel responses to a discovery request within ten days of receiving the allegedly incomplete answers. *See* 49 C.F.R. § 1114.31(a); *see also Canadian Pac. Ry. Co. – Control – Dakota, Minn. & E. R.R. Corp.*, STB Fin. Docket No. 35081, Decision No. 8 (Mar. 27, 2008) (discussing ten-day limitation of § 1114.31(a)). TPI acknowledges that its Motion is subject to the requirements of § 1114.31(a), but misleadingly claims that “the parties agreed to waive the ten-day requirement.” Second Motion at 4 n.4.<sup>6</sup>

The parties did not agree to extend indefinitely the deadlines for filing motions to compel or to waive all timeliness objections to such motions, and TPI's own Exhibits prove that there was no such agreement. After receiving CSXT's objections to its first set of discovery responses, TPI asked CSXT to waive any objection to the timeliness of any motions to compel. *See* J. Moreno Letter to P. Moates (July 16, 2010), at 1 (Second Motion Ex. 2). CSXT responded to this request with a proposal “that motions to compel may be timely filed by either party on or before September 1.” *See* P. Hemmersbaugh Letter to J. Moreno (July 26, 2010), at 2 (Second Motion Ex. 3). TPI never asked – and CSXT certainly never agreed – to extend the deadline for filing motions to compel past September 1.<sup>7</sup>

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<sup>6</sup> While TPI's first motion to compel was not filed until November 4, 2010, that motion arguably was timely under § 1114.31(a) because CSXT's responses to TPI's seventh set of discovery requests was served ten days beforehand on October 25, 2010.

<sup>7</sup> In August, CSXT orally agreed to extend the deadline for filing motions to compel concerning traffic and event data and information until a reasonable period after CSXT produced that traffic data. CSXT completed production of traffic data for 2009 and 2010 on October 6, 2010. None of the requests at issue in the Second Motion relate to traffic revenue or event data.

TPI does not offer any explanation for its failure to timely bring a motion to compel responses to discovery requests to which CSXT squarely objected several months ago, and there is none.<sup>8</sup> Each of the objections that TPI challenges in its Second Motion was clearly asserted by CSXT many months ago. CSXT asserted its objections and responses to TPI's First Set of Discovery Requests on June 23, 2010, which included an objection to TPI RFPs 70, 148, and 149 to the extent those requests called for SSI. *See* Second Mot. Ex. 1 at 69, 122-23. On July 16, CSXT served its objections and responses to TPI's Third Set of Discovery Requests, including an objection to TPI RFP 158 to the extent it called for disclosure of SSI. *See* Second Mot. Ex. 10 at 8. And on October 11, CSXT served its response to TPI's Fourth and Fifth Sets of Discovery Requests, which objected to RFP 162's request for state income tax returns and to RFP 163's demand for pre-2008 RTC studies as irrelevant. *See* Second Mot. Ex. 7 at 2-3. In short, every discovery objection that is at issue in the Second Motion was ripe to be challenged in a motion to compel long before TPI filed the Second Motion. Moreover, CSXT asserted each of these challenged objections clearly and unmistakably in its initial discovery responses.

If § 1114.31(a) is to have any force, then it must mean that a litigant who waits not just weeks but months to challenge another party's objections – and in fact delays to file a motion to compel until a full month after the close of discovery – should not be allowed to bring that untimely motion. TPI has failed to provide any accurate or meaningful justification for its

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<sup>8</sup> TPI's claim that it took a "wait and see" approach to discovery may be a weak attempt to excuse its delay. Second Motion at 3. If so, it is utterly unpersuasive, because CSXT's initial discovery responses left no doubt as to its intentions for each of the objections at issue in this motion. CSXT's responses flatly refused to produce any hazmat-related or PTC-related SSI; made clear that CSXT would not produce outdated RTC studies; and objected to any production of state tax returns. *See* Second Mot. Ex. 1 at 69, 122-23; Second Mot. Ex. 10 at 8; Second Mot. Ex. 7 at 2-3. These objections were clear and unequivocal, and any disagreement TPI had with them was ripe upon its receipt of the objections.

extreme delay, and the Board should not reward TPI's sharp practices by entertaining the Second Motion on the merits.

**III. TPI'S CHALLENGES TO EACH OF THE SPECIFIC REQUESTS AT ISSUE IN THIS MOTION SHOULD BE DENIED.**

Should the Board excuse TPI's untimeliness in filing this Motion, the Motion should be denied on the merits. As it did in its first motion to compel, TPI's present motion misapprehends the applicable legal standard, which according to TPI consists of little more than allowing complainants in rate cases "broad discovery" of anything that is "relevant." Second Mot. at 4. In fact, the Board has made clear that a party's "right to discovery . . . has limits." *CF Industries, Inc. v. Kanab Pipe Line Partners, L.P.*, STB Fin. Docket No. 42084 (Nov. 23, 2004). Among those limits is that general assertions or speculation that requested information might be relevant are not sufficient: "we require more than a minimal showing of potential relevancy before we will grant a motion to compel discovery." *Potomac Elec. Power Co. v. CSX Transp., Inc.*, 2 S.T.B. 290, 292 (1997). Rather, a party seeking to compel discovery is required to "demonstrate a real, practical need for the information" it has requested. *Guidelines*, 1 I.C.C.2d at 548 (1985). Moreover, "discovery also may be denied if it would be unduly burdensome in relation to the likely value of the information sought." *Waterloo Ry. Co. - Adverse Abandonment - Lines of Bangor & Aroostook R.R. Co.*, STB Docket No. AB-124 (Sub-No. 2) (Nov. 13, 2003).<sup>9</sup> TPI fails to meet that test for the information it has requested here.

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<sup>9</sup> Since TPI cites several federal court decisions in the Second Motion, it is worth noting that, like the Board's rules, the Federal Rules of Civil Procedure "will not permit unlimited discovery" and do not give litigants "a license to engage in an unwieldy, burdensome, and speculative fishing expedition." *Murphy v. Deloitte & Touche Group Ins. Plan*, 619 F.3d 1151, 1163 (10th Cir. 2010).

**A. TPI's Request for SSI Should Be Denied (RFPs 70, 158, 148 & 149).**

**1. RFPs 70 & 158**

Four of the discovery objections that TPI belatedly challenges involve whether or not it is entitled to view Sensitive Security Information (“SSI”) in CSXT’s possession. First, RFPs 70 and 158 request CSXT studies and reports to federal or state agencies regarding “CSXT’s compliance with regulations for handling, routing, or proposed routing of hazardous materials.” *See* Second Mot. Ex. 1 at 69; *id.* Ex. 10 at 8. These requests appear to be directed at the routing analyses and risk assessments CSXT performs pursuant to Section 1551 of the 9/11 Commission Act (Pub L. No. 110-53) (codified at 6 U.S.C. § 1201) and 49 C.F.R. § 172.820.<sup>10</sup> The Federal Railroad Administration (“FRA”) and the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) have specifically directed that these analyses are SSI, and as such CSXT is forbidden from disclosing them to TPI. Moreover, these routing analyses are not relevant to a SAC case and not necessary for TPI to develop a SARR. If TPI chooses to select any hazardous materials traffic for its SARR traffic group, CSXT has already produced data on the actual routes taken by that traffic and information on CSXT’s protocols for handling that traffic. TPI has no need for the SSI it demands that CSXT produce – let alone the “real, practical need” that it must demonstrate to compel production. *Guidelines*, 1 I.C.C.2d at 548.

Sensitive Security Information is “information obtained or developed in the conduct of security activities, including research and development, the disclosure of which TSA [the Transportation Security Administration] has determined would . . . [b]e detrimental to the security of transportation.” 49 C.F.R. § 1520.5(a). Section 1520.5(a) designates several categories of information as SSI, including “[v]ulnerability assessments,” “rail transportation

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<sup>10</sup> The only documents CSXT possesses that could be responsive to RFPs 70 and 158 are the routing analysis documents addressed in this section.

security measures,” and information on critical rail infrastructure assets. *Id.* at § 1520.5(b)(5, 8, 12). Disclosure of SSI is restricted to “covered persons” with a need to know. *See* 49 C.F.R. § 1520.7. Federal courts have recognized that an SSI designation is a valid privilege against discovery. *See Chowdhury v. Northwest Airlines Corp.*, 226 F.R.D. 608, 615 (N.D. Cal. 2004).

Federal regulations require rail carriers transporting certain hazardous materials to prepare an annual “[r]ail transportation route analysis” of safety and security risks on corridors in which such materials are handled and to use that routing analysis to select the route for moving covered materials. *See* 49 C.F.R. § 172.820 at (c) & (e). When promulgating this regulation, PHMSA made clear that routing analyses and related documents were SSI and should only be released to persons with a need to know: “The route selection documentation and underlying data will qualify as sensitive security information (SSI), will be handled in accordance with the SSI regulations at 49 C.F.R. Parts 15 and 1520, and may distributed only to ‘covered persons’ with a ‘need to know.’” *Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments*, 73 Fed. Reg. 72182, 72187 (2008); *see also* 49 C.F.R. § 172.820(e) (requiring rail carriers to “restrict the distribution, disclosure, and availability of information contained in the route analysis to covered persons with a need-to-know, as described in parts 15 and 1520 of this title”). TPI has not demonstrated it has a “need to know” this information within the meaning of governing regulations. The routing analyses CSXT prepares pursuant to the PHMSA routing regulation are unquestionably SSI and may not be released to TPI.

In any event, the routing analyses TPI seeks are not relevant. The only theory of relevance TPI states in its motion is that review of CSXT’s reports to government agencies might reveal that CSXT was not complying with some regulations, and thus that requiring the SARR to

comply with those regulations would be a “barrier to entry.” Second Motion at 12.<sup>11</sup> Not only is this a distortion of the Board’s barrier to entry rules, it makes no sense in the context of CSXT’s routing assessments. The routing analyses CSXT prepares in the course of complying with PHMSA regulations are not documentary records of CSXT’s compliance with federal regulations – rather, they are highly security-sensitive risk and threat assessments. TPI would not learn anything about CSXT’s compliance with federal regulations from these routing analyses (other than the fact that CSXT complies with the PHMSA routing regulations by preparing the required analyses). Because the only CSXT documents responsive to RFPs 70 and 158 are SSI that is both protected from disclosure and irrelevant to the development of stand alone evidence in this case, TPI’s motion to compel their production should be denied.

## **2. RFPs 148 & 149**

Relatedly, TPI has demanded production of all SSI information in CSXT’s Positive Train Control (“PTC”) Implementation Plan and the studies supporting that plan. *See* Second Mot. at 17-19. While CSXT has produced a copy of its PTC plan with SSI data redacted, and has produced substantial data on its PTC costs, TPI insists that this information is not sufficient and that it needs CSXT to give it the SSI information that was redacted. TPI is wrong.

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<sup>11</sup> Here, as with several other requests at issue in the Second Motion, TPI’s theory of relevance is ever-changing. On July 16, TPI stated that it would withdraw the language “compliance with regulations for” from RFP 70 and therefore recast it as a request for reports regarding “CSXT’s handling, routing, or proposed routing of hazardous materials.” Second Mot. Ex. 2 at 13-14. TPI argued that this narrowed request would be relevant because the SARR might handle or route hazardous commodities. On October 27, however, TPI reversed itself, and insisted that it needed reports on “CSXT’s compliance with federal and state regulations for handling and routing hazardous materials” in order to determine how the SARR might handle such movements. Second Mot. Ex. 6 at 2. TPI does not explain this reversal. The fact that it waited until after the close of discovery to resurrect its withdrawn demand for reports addressing CSXT’s compliance with regulations is another reason its Motion should be denied.

It does not need this information, and even if it were relevant CSXT is not permitted to disclose SSI to TPI.

Several months ago CSXT produced its PTC Implementation Plan (with SSI redacted) and substantial data detailing CSXT's PTC spending and its estimates of future PTC expenses. See Reply Ex. 6,<sup>12</sup> file "CSXT\_PTCIP\_v1.02\_Redacted.pdf" (redacted PTC plan produced to TPI). The first page of the PTC plan CSXT produced makes clear that portions of the plan "have been redacted because they contain: 1. Sensitive Security Information under 49 CFR part 15 and 1520, and/or 2. Confidential safety risk analysis records not subject to public disclosure under the Rail Safety Improvement Act of 2008, 49 USC Sec. 201118." *Id.* at 1. CSXT produced one spreadsheet detailing PTC expenses broken down by CSXT department and another with PTC spending broken down by state. See Reply Ex. 6, files "PTC Capital Cost By State" & "PTC Costs Per Year.xls".

TPI complains that the data CSXT has produced does not contain CSXT's location-specific spending to date. However, CSXT cannot disclose location-specific spending to TPI, because the priority in which CSXT is deploying PTC on its lines is based on a risk-based assessment of safety and security hazards. The FRA's final PTC rule instructed railroads to implement "a phased, risk-based roll out of PTC" that would "progressively equip" rail networks with PTC so that lines with the highest safety and security concerns would receive first priority for PTC. Federal Railroad Administration, *Positive Train Control Systems*, 75 Fed. Reg. 2598, 2619 (Jan. 15, 2010). CSXT's PTC plan follows this instruction by beginning PTC implementation on segments that have the highest security risk. These routes have been

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<sup>12</sup> Reply Exhibit 6 is a disk containing selected data files that CSXT produced to TPI in discovery (and before TPI filed the Second Motion). These data files have been designated Highly Confidential.

identified in part through routing analyses and vulnerability assessments that are unquestionably SSI under 49 C.F.R. § 1520.5.<sup>13</sup> Even if location-specific spending information were necessary for TPI to develop PTC costs for its SARR (and it is not), CSXT is precluded by SSI regulations from disclosing it.

For all the reasons above, TPI's motion to compel further responses to RFPs 70, 148, 149, and 159 should be denied. But if the Board has any doubts as to whether the requested information is SSI, CSXT submits that the Board should not issue a decision on that question without consulting with both TSA and FRA. The Board has not been vested with authority to remove an SSI classification, and CSXT respectfully submits that it would not be appropriate for the Board to unilaterally order CSXT to disclose SSI to TPI.

**B. TPI's Request for Untimely RTC Studies Should Be Denied (RFPs 43 & 163).**

TPI also moves to compel production of documents responsive to two requests related to Rail Traffic Controller ("RTC") studies. However, the information TPI requests either has already been produced, does not exist, or is outdated and irrelevant.

**1. RFP 43**

TPI's initial discovery requests included RFP 43, a request for RTC studies performed over the previous three years. *See* Second Mot. Ex. 1 at 53. On August 5, 2010, CSXT produced an external hard drive containing several responsive RTC studies created over the past three years. TPI raised no complaint about CSXT's production of RTC studies for two full months. On October 8, TPI announced that it considered CSXT's RTC study production to

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<sup>13</sup> TPI's claim that the PTC rule instructed railroads to "narrowly designate" confidential information misreads the language it cites. Second Mot. at 19 n.11. In fact, the cited language makes clear that FRA believed that "security sensitive information" was one category of information that "truly justifi[ed]" confidentiality designation. Federal Railroad Administration, *Positive Train Control Systems*, 75 Fed. Reg. 2598, 2640 (Jan. 15, 2010).

be “incomplete,” because CSXT had not provided certain RTC output files. *See* Second Mot. Ex. 4. CSXT responded by explaining that TPI could generate any output files it needed from the data CSXT had provided. *See* Second Mot. Ex. 5. Attachment at 5. TPI has not contested this fact. Instead, TPI concocted a new claim on October 27: that it needed to “verify” CSXT’s output files in order to ensure that the models CSXT produced “were the same as used by CSXT in the normal course of business.” *See* Second Mot. Ex. 6 at 2.

TPI’s Motion does not dispute that it can readily generate any RTC output files that it wants from the data CSXT produced on August 5, and does not identify any need for the requested data. TPI’s general claim that “[o]perational modeling of the CSXT rail system is clearly relevant” is beside the point – TPI already has the operational models at issue, and if it thinks it needs additional RTC output files then it can generate them. As for TPI’s October 27 claim that it needs CSXT’s output files in order to verify that CSXT generated the RTC studies in the normal course of business (a claim so flimsy that TPI does not repeat it in the Second Motion), the notion that the RTC studies CSXT produced were generated outside the regular course of business is both ridiculous and irrelevant to the development of SAC evidence. Because TPI has not articulated any need for these output files, its motion to compel must be denied.<sup>14</sup>

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<sup>14</sup> Perhaps because it is unable to demonstrate a need for the output files, TPI focuses its argument on CSXT’s alleged failure to articulate a timely objection to producing RTC output files. But only TPI has been delinquent. CSXT did not object to RFP 43(c) because it has produced the information requested by that subpart, in the form of RTC studies produced August 5 that included all necessary information to generate the output files. After receiving those studies, TPI waited two full months before asserting that they were incomplete. CSXT has produced similar RTC information to other SAC complainants, and none has ever argued that it needed additional output files.

## 2. RFP 163

On September 20 TPI served RFP 163, a request for any RTC files “created since January 1, 2000 that develop the track layout of the entire or a majority of CSXT’s rail system.” *See* Second Mot. Ex. 7 at 2. CSXT responded that it does not have this sort of “system-wide” RTC data, and that TPI’s request for RTC studies going back to 2000 was unreasonably broad and not calculated to lead to the discovery of admissible evidence. *See* Second Mot. Ex. 7 at 3. After the close of discovery TPI claimed for the first time that it had evidence in the form of a presentation that CSXT possessed a “system-wide RTC case simulation” (Second Mot. Ex. 6 at 2); CSXT demonstrated that TPI had misread the presentation, and reiterated that CSXT does not have any RTC models or underlying RTC data for the entire CSXT system. *See* Second Mot. Ex. 8 at 3. Despite this explanation, in the Second Motion TPI insists on production of “system-wide RTC.” as well as all RTC studies for the past ten years.

TPI’s inexplicable continued demand for “system-wide RTC” data can be addressed quickly, because that data simply does not exist. Before TPI filed its motion, CSXT clearly explained on two occasions that it does not possess RTC data replicating the entire CSXT network. *See* Second Mot. Ex. 7 at 3; Second Mot. Ex. 8 at 4. Rather, “[w]hen CSXT undertakes an RTC study, the only input files that are created are those necessary for study of that specific segment.” Second Mot. Ex. 7 at 3. TPI’s October 27 claim that a presentation by a CSXT executive implied that CSXT had such a systemwide model was thoroughly rebutted by CSXT’s November 4 explanation that the only RTC study mentioned in the presentation was a 2004 RTC study that modeled CSXT’s I-65 corridor from Chicago to Jacksonville, and that the presentation did not suggest the existence of a full-system RTC analysis. *See* Second Mot. Ex. 8 at 5.

As for TPI's insistence that CSXT produce studies from four-to-ten years ago, this overbroad request for irrelevant information should be denied. In the first place, while RTC is a valuable tool for testing a SARR's operating plan, an incumbent railroad's previous RTC studies have little relevance to developing SAC evidence. RTC studies are highly dependent on the specific inputs to that particular study – from the volume and type of traffic, to the number of available locomotives, to the design and existence of infrastructure and facilities such as yards and side tracks. An RTC study that models CSXT's full traffic base over a line with CSXT's full facilities will therefore have almost no utility to test the feasibility of a SARR that is selecting a subset of the carrier's traffic and only replicating a portion of the carrier's facilities. And any arguably marginal relevance of a CSXT RTC study is particularly tenuous for older studies. Given the dynamic nature of railroad markets and traffic, older RTC studies generally model operations for a significantly different traffic group than the group that is currently served.

TPI does not articulate why it thinks four-to-ten-year-old RTC studies are relevant.<sup>15</sup> Instead, it takes the extraordinary position that no litigant may ever properly object to the date range of a discovery request, because requests for outdated information only impact the “weight” of the evidence. *See* Second Mot. at 10-11. That is not the law. Requests for outdated and marginally relevant information are precisely the sort of requests that should be denied as “unduly burdensome in relation to the likely value of the information sought.” *Waterloo Ry. Co. – Adverse Abandonment – Lines of Bangor & Aroostook R.R. Co.*, STB Docket No. AB-124

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<sup>15</sup> TPI's assertion that the mention of a 2004 RTC study in a 2010 presentation means that older studies are relevant is meritless. *See* Second Mot. at 10. The 2004 study was only mentioned in that presentation as part of a historical case study of a network planning analysis. This has nothing at all to do with the relevance of a 2004 RTC study to TPI's development of a SARR that would not begin operations until 2010.

(Sub-No. 2) (Nov. 13, 2003). Here, where TPI has not identified any real, practical need for the outdated information it requests, its motion should be denied.

**C. TPI's Demand for Production of State Tax Returns Should Be Denied (RFP 162).**

TPI's Request No. 162 demands that CSXT produce all state income tax returns for 2008 and 2009. CSXT objected to this extraordinary request on the grounds that its state tax returns were not relevant to the preparation of SAC evidence. On October 27 – twelve days after the close of discovery – TPI first put forth the theory of relevance that it asserts in the Second Motion, namely that it needs to review CSXT's 2008 and 2009 tax returns to identify any "tax credits" from those years that it might be able to claim for the SARR. *See* Second Mot. Ex. 6 at 4. TPI's demand makes little sense, because the SARR presumably will not begin operations until 2010 and would not have any income that could be taxed.<sup>16</sup>

To the extent that TPI believes it needs access to CSXT-specific state tax rates for 2008 and 2009, that information is publicly available. Pursuant to *Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method*, STB Ex Parte No. 682 (Sept. 21, 2009), the Association of American Railroads ("AAR") submits weighted average state tax rates for each Class I railroad, including CSXT. AAR submitted its calculation of 2008 state taxes on October 23, 2009 (in Ex Parte 646 (Sub-No. 2)), and its calculation of 2009 state taxes on May 28, 2010.<sup>17</sup> The publicly available workpapers for the AAR's submissions include detailed state-by-state tax information for each Class I railroad.

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<sup>16</sup> While a DCF analysis does take account of operating losses before a SARR begins service in determining tax treatment for the SARR, it is not at all clear how any items on CSXT's state income tax returns for 2008 and 2009 could be relevant to the DCF analysis.

<sup>17</sup> *See* Submission of Association of American Railroads, Ex Parte No. 682, *Annual Submission of State Tax Information for Use in the Revenue Shortfall Allocation Method* (filed May 28, 2010) (calculation of 2009 state tax rates for Class I railroads); Submission of Association of

Furthermore, TPI's demand to be allowed to fish through dozens of state income tax returns CSXT filed for 2008 and 2009 to look for some potential tax credit is a classic example of a request that is "unduly burdensome in relation to the likely value of the information sought." *Waterloo Ry. Co. – Adverse Abandonment – Lines of Bangor & Aroostook R.R. Co.*, STB Docket No. AB-124 (Sub-No. 2). Even if there were some conceivable relevance to CSXT tax returns filed before the SARR begins operations (and there is not), any such relevance would be far outweighed by the burden of forcing CSXT to produce dozens of state tax returns at this late stage of the proceedings.

**D. CSXT Has Fully Responded to All Remaining Requests in the Motion.**

For reasons that are not clear, the Second Motion encompasses four requests to which CSXT has not objected, for which CSXT has produced responsive information, and about which TPI never complained about the scope of CSXT's production until after the close of discovery. In the case of RFP 129, TPI did not complain about the allegedly missing information until two business days before it filed this motion to compel. In the cases of RFPs 105, 134, and 135, TPI asserted for the first time in an October 27 letter that it was unsatisfied with the data that had been produced and requested that CSXT provide additional information. *See* Second Mot. Ex. 6 at 2-3. That October 27 letter identified 29 discovery requests for which TPI claimed CSXT had provided insufficient information. CSXT responded on November 4 as to 25 of those 29 requests, pointing out that in many cases TPI's assertions that data was missing were incorrect. *See* Second Mot. Ex. 8. CSXT informed TPI that it would investigate the remaining requests for which TPI asserted that the produced data was incomplete. *See id.* at 3 n.2. Rather

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American Railroads, Ex Parte No. 646 (Sub-No. 2), *Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method* (filed Oct. 23, 2009) (calculation of 2008 state tax rates for Class I railroads).

than wait for CSXT's response (or ask CSXT to prioritize its investigation of those requests above the dozens of other requests TPI has posed), TPI responded by including RFPs 105, 134, and 135 in this motion to compel.

In short, TPI's Motion to Compel on these four requests was entirely unnecessary. For each of these requests, CSXT will produce or has produced the information TPI demands in the Motion to Compel (if it exists). Each of these requests is addressed below:

**RFP 105:** This request asked for production of certain intracorporate agreements between CSXT and other CSX corporate affiliates, namely CSX Corporation, TRANSFLO Corporation ("TRANSFLO"), CSX Technology, Inc. ("CSX Technology"), Total Distribution Services, Inc. ("TDSI"), and CSX Intermodal, Inc. ("CSXI").<sup>18</sup> CSXT produced a number of responsive intracorporate agreements in July. On October 27, 2010, TPI first informed CSXT that it believed that CSXT's July production was incomplete because it did not include agreements governing what costs TRANSFLO, CSX Technology, and TDSI charge to CSXT for services provided to CSXT.<sup>19</sup> Those agreements have been produced to TPI, and TPI's motion as to this request is moot.

**RFP 129:** RFP 129 requested production of detailed information on all CSXT's construction and rehabilitation projects since 2007 costing over \$500,000. Because there are thousands of potentially responsive projects, CSXT proposed to give TPI a list of projects from which TPI could select projects to review. TPI agreed, and on August 9 CSXT produced a list of

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<sup>18</sup> CSXI merged with and into CSXT effective June 26, 2010.

<sup>19</sup> RFP 105 was also listed as an incomplete response in an October 8 letter that incorrectly claimed that CSXT had failed to respond to dozens of TPI's discovery requests. *See* Second Mot. Ex. 4. Because the October 14 letter did not explain the alleged deficiency in RFP 105 (and included it along with over forty-five inaccurate claims that CSXT had not provided responsive information to other discovery requests), CSXT was not aware of TPI's specific complaint about CSXT's RFP 105 production until October 27. *See* Second Mot. Ex. 5 (Oct. 14, 2010 CSXT letter correcting multiple misstatements in October 8 letter).

Authorization for Expenditures ("AFEs"). See Reply Ex. 6, file "Capital Projects.xls". On August 26 TPI identified 225 projects it wished to review, and CSXT produced available AFEs for the selected projects on September 23. Along with its September 23 production CSXT produced the electronic file "AFEExpend.xlsx," which contained approximately 978,000 records of detailed expenditure data. See Reply Ex. 6, file "AFEExpend.xlsx" Among other things, AFEExpend.xlsx includes detailed information for 53,000 individual invoices, including the name of the supplier paid; the invoice number; the invoice date; the dollar amounts paid; and the type of expense to which the invoice applies.<sup>20</sup> In addition CSXT produced a large invoice audit file that includes additional descriptions, quantities and unit prices for thousands of invoices for the AFEs requested by TPI. See Reply Ex. 6, file "INVOICE\_AUDIT.zip"

While TPI now asserts that CSXT's responses to 129(g) have been incomplete because they did not include invoice data responsive to 129(g), TPI did not make that claim in its October 8 or October 27 letters, each of which claimed to list CSXT's incomplete discovery requests. See Second Mot. Ex. 4, Attachment 1 at 3<sup>21</sup>; Second Mot. Ex. 6. Indeed, before filing the Second Motion the only indication TPI ever gave that it wished to review additional invoice information was in a November 12, 2010 letter requesting invoices for one of the hundreds of AFEs that have been produced. See Reply Ex. 5 at 2. The Second Motion does not explain why TPI chose not to bring this claimed deficiency to CSXT's attention before filing the Second Motion.

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<sup>20</sup> In response to TPI's requests to review older AFE data, the parties agreed that CSXT would produce a list of AFEs dating back to 2000 from which TPI could make additional selections. CSXT produced that list on September 29 ("Supplemental Capital Projects from 2000.xls" on Reply Ex. 6), and TPI made selections from that list on October 18. CSXT produced responsive documents on October 29.

<sup>21</sup> The only alleged deficiency in CSXT's RFP 129 response that TPI's October 8 letter identified was a failure to state whether projects were performed under traffic. CSXT explained on October 14 that it does not maintain that information. See Second Mot. Ex. 5, Attachment 1 at 8.

TPI's demand for production of invoices is cumulative and unduly burdensome. TPI does not mention that its allegedly "limited" request for invoices for the AFEs that have been produced amounts to approximately 53,000 invoices, approximately 13,500 of which are related to materials purchases. TPI is (or should be) aware of this fact, since "AFEexpend.xlsx" has approximately 53,000 different invoice numbers. These 53,000 invoices are not kept in any single central location, and it would take a considerable effort for CSXT to produce even a portion of them. The enormous burden of producing such a vast number of invoices far outweighs any relevance, particularly because nearly all the relevant information that TPI might derive from the hard copy invoices was produced electronically in long before TPI filed this Motion.

**RFPs 134 and 135:** RFPs 134 and 135 request information about CSXT construction or rehabilitation projects for bridges and traffic control systems, respectively. For each request, the parties agreed to follow the AFE selection process detailed above for RFP 129, and on September 23 CSXT produced AFEs for the projects selected by TPI. TPI's October 8 letter did not identify any deficiencies in CSXT's production for these two requests other than a query about whether projects had been performed under traffic (to which CSXT responded on October 14). *See* Second Mot. Ex. 4, Attachment 1 at 3; Second Mot. Ex. 5, Attachment 1 at 8-9. On October 27, TPI for the first time claimed that CSXT's AFE production as to these requests was not adequate for TPI's purposes. *See* Second Mot. Ex. 6 at 3. After investigating TPI's requests, CSXT has identified some additional information that responds to TPI's October

27 requests. This information has been produced to TPI, and TPI's motion as to this request is moot.<sup>22</sup>

#### IV. CONCLUSION

For the above reasons, TPI's Motion to Compel should be denied.

Respectfully submitted,



Peter J. Shutz  
Paul R. Hitchcock  
John P. Patelli  
Kathryn R. Barney  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202

G. Paul Moates  
Paul A. Hemmersbaugh  
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(202) 736-8711 (fax)

*Counsel to CSX Transportation, Inc.*

Dated: November 24, 2010

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<sup>22</sup> CSXT is continuing to investigate whether it possesses additional responsive information to TPI's October 27 requests, and if CSXT identifies any additional information it will produce that information promptly.

## CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2010, I caused a copy of the foregoing Reply to TPI's Second Motion to Compel to be served on the following parties by first class mail, postage prepaid or more expeditious method of delivery:

Jeffrey O. Moreno  
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Lucinda K. Butler, Director  
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Ft. Myers, FL 39916



Eva Mozena Brandon

# EXHIBIT 1

November 15, 2010

*By E-Mail and First Class Mail*

Paul Hemmersbaugh  
Sidley Austin LLP  
1501 K Street, NW  
Washington, DC 20005

**RE: TOTAL Petrochemicals USA, Inc. v. CSX Transportation, Inc. et al., STB  
Docket No. 42121**

Dear Paul:

This letter is both a follow-up and a partial response to your November 4, 2010 letter, which replied to my October 27, 2010 letter. Despite your assertions that TOTAL Petrochemicals USA, Inc. ("TPI") has exaggerated and misstated the discovery responses of CSX Transportation, Inc. ("CSXT"), TPI continues to identify areas where CSXT's responses remain incomplete, including discovery requests that your November 4<sup>th</sup> letter claims are completed. This letter summarizes those discovery requests.

Interrogatory 13

In your November 4, 2010 letter, you stated that CSXT had produced information in response to Interrogatory No. 13, and that additional information would be provided that same day. CSXT, however, has not responded to Interrogatory 13(d), which requests identification of lift and other charges paid to contractors. The information provided by CSXT to date is related to charges to customers, not payments to contractors. Please provide the contractor data requested by Interrogatory 13(d).

RFP 13

In an October 1, 2010 e-mail, TPI requested certain decoders and field identifiers that are necessary for TPI to use track chart data produced by CSXT. Your November 4<sup>th</sup> letter states that CSXT responded to this e-mail in an October 22, 2010 letter from Noah Clements. But, that October 22nd letter was a response to TPI's e-mail of October 7th (which requested clarification regarding certain train profile spreadsheets). Please provide a response to TPI's October 1, 2010 e-mail.

RFP 49

In a letter dated August 26, 2010, and forwarded to you in an e-mail on August 27th, TPI identified documents responsive to RFP 49 for inspection by TPI in Jacksonville. In a

Jeff.Moreno@ThompsonHine.com Phone 202.263.4107 Fax 202.331.8330

228279.1

November 15, 2010

Page 2

September 3, 2010 letter from Matthew Warren, CSXT stated that it would produce the requested documents rather than require TPI to inspect them in Jacksonville. To date, CSXT has not produced these documents. Please complete CSXT's response.

RFP 75

This request seeks joint facility agreements, underlying bills, and other related information, some of which CSXT produced on the same date as your November 4<sup>th</sup> letter. In response, CSXT has provided 175 joint facility agreements. However, underlying bills have only been provided for 43 of the agreements. Please provide underlying bills for the other 132 agreements.

RFP 85

This request seeks railcar repair and maintenance expenses, records, databases, corresponding railcar miles, and other information. Your November 4<sup>th</sup> letter states that CSXT produced responsive data on October 15, 2010 on CSXT-TPI-HC-DVD-064. That data, however, contains information that is responsive to RFP 87, not to RFP 85. CSXT has not yet provided the railcar maintenance expenses or corresponding miles requested by RFP 85. Please complete CSXT's response to RFP 85.

RFP 118

This request seeks agreements and other documents related to payments or contributions by government (or quasi-government) agencies. In an August 27, 2010 e-mail, TPI identified 13 agreements for review from a list previously provided by CSXT. To date, CSXT has only provided 3 of the 13 agreements selected by TPI. Your November 4<sup>th</sup> letter states that CSXT has produced all electronically available information, and that it is working to identify additional hard copy files in its possession. Please state when CSXT will provide the remaining 10 agreements.

RFP 159

This request seeks railcar maintenance agreements, dollar amounts paid, corresponding railcar miles, and other information. Your November 4<sup>th</sup> letter states that CSXT provided responsive information on CSXT-TPI-HC-DVD-064. However, the documents produced by CSXT do not include CSXI agreements for railcar repair and maintenance, or associated expense or mileage information. Please complete CSXT's response by providing the information requested for CSXI.

November 15, 2010  
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Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey O. Moreno". The signature is written in a cursive style with a prominent initial "J".

Jeffrey O. Moreno

# EXHIBIT 2



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FOUNDED 1866

November 19, 2010

**By Courier**

Jeffrey O. Moreno  
Thompson Hine, LLP  
1920 N Street, N.W., Suite 800  
Washington, D.C. 20036

Re: Total Petrochemicals USA, Inc. v. CSX Transportation, Inc., STB Docket No. 42121

Dear Jeff:

We are writing to respond to several of Total Petrochemicals USA, Inc.'s ("TPI") recent requests related to documents produced by CSX Transportation, Inc. ("CSXT") in the above referenced proceeding.

**October 15, 2010 Letter**

On October 15, 2010, TPI requested production of five specific agreements on the grounds that they were "relevant to the subject matter of this case." While it is not clear why TPI thinks these agreements are relevant, in an effort to compromise CSXT responds to TPI's requests as follows:

- **Oct. 15 Paragraph 1:** Contrary to TPI's claims, nothing is missing from this Master Trackage Rights Agreement. CSX-TPI-HC-038828 is an attachment to a standard form trackage rights addendum of the master trackage rights agreement, and the diagram in that standard form is intended to be blank. The trackage rights addendum and attachment that correspond to the R.J. Corman trackage rights agreement have been produced. See CSX-TPI-HC-038723—38725.
- **Oct. 15 Paragraph 2:** The requested documents were produced at CSX-TPI-HC-042403—42483.
- **Oct. 15 Paragraph 3:** The requested documents is being produced today at CSX-TPI-HC-045636—45654.

Jeffrey O. Moreno  
November 19, 2010  
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- **Oct. 15 Paragraph 4:** The requested documents is being produced today at CSX-TPI-HC-045655—45661.
- **Oct. 15 Paragraph 5:** The requested documents were produced at CSX-TPI-HC-042653—43100.

**November 15, 2010 Letter**

The BLM decoder requested in TPI's November 2, 2010 letter is being produced today.

**November 15, 2010 Letter**

On November 15, 2010, TPI sent a letter purporting to "summarize[]" the "areas where CSXT's responses remain incomplete." In fact, CSXT has provided complete responses to each of the seven discovery requests cited in TPI's letter.

- **Interrogatory 13:** TPI claims that CSXT has not responded to subsection (d) of this interrogatory, which requests identification of lift and other charges paid to contractors. CSXT produced the file "Intermodal Vendor Payments.xls" on CSX-TPI-HC-DVD-071, and is producing "BLM Decoder.xls" on CSX-TPI-HC-DVD-080. With these two files, TPI can identify lift and other charges paid to contractors for each location.
- **RFP 13:** CSXT responded to TPI's October 1, 2010 email asking for further detail on track chart data on October 26, 2010. *See* Letter from M. Warren to J. Moreno (Oct. 26, 2010).
- **RFP 49:** All responsive documents have been produced. On CSXT-TPI-HC-DVD-011, produced July 27, 2010, CSXT produced agreements for BNSF and UP run-throughs and for the few cases in which shippers perform inspections. There are no other third-party contracts related to inspections for CSXT. All other inspections are performed by CSXT personnel. For intermodal, any third party inspections are covered in the contracts produced on CSXT-TPI-HC-DVD-011. No other responsive agreements exist.
- **RFP 75:** TPI complains that underlying bills have been produced for only 43 of the 175 joint facility agreements that CSXT has produced. However, bills do not exist for many joint facility agreements, because many agreements do not involve compensation between the parties. CSXT has provided all payable and receivable invoices for the joint facility agreements that involve compensation among the parties. No invoices exist for the other agreements cited by TPI.

Jeffrey O. Moreno  
November 19, 2010  
Page 3

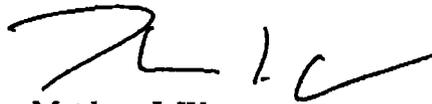
- **RFP 85:** While TPI claims that CSXT-TPI-HC-DVD-064 does not contain information responsive to this request, that is not true. See "CSX Inspection and Repair.xls" on that DVD. As for TPI's request for mileage detail, CSXT does not track mileages by shop location. For a measure of throughput, CSX did provide the total number of cars processed through each yard, the number of inspections, and the number of cars shopped for the corresponding locations in that spreadsheet.
- **RFP 118:** TPI's claim that ten of the agreements it requested on August 27, 2010 have not been produced is not correct. Six of those agreements were produced among the joint facility agreements CSXT produced on CSXT-HC-DVD-040. Three were produced on CSXT-TPI-HC-DVD-071. The remaining four cannot be located.
- **RFP 159:** CSXT has completely responded to this request and has produced responsive agreements and information on amounts paid for maintenance. CSXT produced "Intermodal Railcar Maintenance (CSX-TPI-HC-40817 to 41136).pdf" on CSXT-TPI-HC-DVD-061. Actual amounts paid are included in "Intermodal Vendor Payments.xls" on CSXT-TPI-HC-DVD-071.

\* \* \*

The information referenced above, along with some additional side track agreements and a freight car lease, are being produced by CSX Transportation, Inc. ("CSXT") on the enclosed DVDs. The DVDs labeled CSX-TPI-C-DVD-080 and CSX-TPI-C-DVD-081 and the documents contained on those DVDs have been designated "Highly Confidential" pursuant to the June 23, 2010 Protective Order entered by the Surface Transportation Board in this proceeding. These DVDs contain pdf files labeled CSX-TPI-HC-DVD-45630 through CSX-TPI-HC-45661.

If you have any questions, please contact Paul Hemmersbaugh or me.

Sincerely,



Matthew J. Warren

# EXHIBIT 3

November 2, 2010

*By E-Mail and First Class Mail*

Paul Hemmersbaugh  
Sidley Austin LLP  
1501 K Street, NW  
Washington, DC 20005

**RE: TOTAL Petrochemicals USA, Inc. v. CSX Transportation, Inc. et al.; STB  
Docket No. 42121**

Dear Paul:

TOTAL Petrochemicals USA, Inc. ("TPI") is continuing its review of documents produced by CSX Transportation, Inc. ("CSXT") in response to TPI's discovery requests in the above-captioned proceeding. Based on this review, TPI believes the following agreements between CSXT and its connecting carriers should have been produced in response to Request for Production ("RFP") #17:

- 1) The September 3, 1996 agreement between CSXT and Warren and Trumbull Railroad, Inc. ("WTRM") for WTRM to lease and operate CSXT's line at Girard, Ohio, referred to on CSX-TPI-HC-040632;
- 2) The August 31, 1992 Purchase and Sale Agreement between CSXT and Wheeling & Lake Erie Railway Company related to the CSXT line from Martins Ferry, OH to Benwood, WV, referred to on CSX-TPI-HC-040135; and
- 3) The agreement conveying Conrail's rail line, known as the Louisville Secondary, from Milepost 4.01 (Indianapolis, IN) to Milepost 110.6 (Louisville, KY), to the Louisville & Indiana Railroad, referred to on CSX-TPI-HC-036704.

Please produce these agreements.

Additionally, in response to RFP #116, CSXT produced a spreadsheet titled "Intermodal Vendor Payments.xls" on CSX-TPI-HC-DVD-071. Please provide a definition of, and a decoder for, the information contained in the column titled "BLM".

Sincerely,



Jeffrey O. Moreno

Jeff.Moreno@ThompsonHine.com Phone 202.263.4107 Fax 202.331.8330

227882.1

# EXHIBIT 4

November 19, 2010

David E. Benz

*By E-Mail and First Class Mail*

Paul Hemmersbaugh  
Sidley Austin LLP  
1501 K Street, NW  
Washington, DC 20005

**RE: TOTAL Petrochemicals USA, Inc. v. CSX Transportation, Inc. et al., STB  
Docket No. 42121**

Dear Paul:

As part of the discovery process in the above-captioned case, CSX Transportation, Inc. ("CSXT") provided certain agreements on CSX-TPI-HC-DVD-040 in response to the discovery requests of TOTAL Petrochemicals USA, Inc. ("TPI"). In evaluating the data on this DVD, TPI has discovered gaps in CSXT's production, or additional responsive information and documents that should be produced.

CSXT produced an agreement, labeled "UP 205", between it and the Union Pacific Railroad Company. This agreement is missing six pages. The agreement is found at Bates numbered documents CSX-TPI-HC-028400 through 028511, but pages 27-32 of the agreement are missing. Please provide the missing pages.

At Bates numbered document CSX-TPI-HC-023893, there is a reference to a "Rail Switching Agreement" dated May 13, 2003 between CSXT and Jefferson Warrior Railroad Company, Inc. Please provide this Rail Switching Agreement.

At Bates numbered document CSX-TPI-HC-023893, there is a reference to an "Interchange Agreement" dated May 13, 2003 between CSXT and Jefferson Warrior Railroad Company, Inc. Please provide this Interchange Agreement.

CSXT attempted to produce an agreement labeled "NS 584" between CSXT and Norfolk Southern Railway Company at Bates numbered documents CSX-TPI-HC-026873 through 026890. However, these pages are blank except for the Bates number on each page. Please provide the "NS 584" agreement.

Please do not hesitate to contact me if you have any questions.

Best regards,



David E. Benz

# EXHIBIT 5

November 12, 2010

*By E-Mail and First Class Mail*

Paul Hemmersbaugh  
Sidley Austin LLP  
1501 K Street, NW  
Washington, DC 20005

**RE: TOTAL Petrochemicals USA, Inc. v. CSX Transportation, Inc. et al., STB  
Docket No. 42121**

Dear Paul:

This letter covers two issues pertaining to the discovery process in the above-captioned case.

Documents for TPI Review: RFP Nos. 98, 119, and 139

First, in response to certain discovery requests, CSX Transportation, Inc. ("CSXT") stated that TOTAL Petrochemicals USA, Inc. ("TPI") could select documents, from a list provided by CSXT, for review at CSXT's offices in Jacksonville. With this letter, TPI hereby requests documents to review in Jacksonville for Requests for Production 98, 119, and 139.

Attachment No. 1 to this letter is a list of contracts by Contractor Name, CSXT Contract Number, and city and state. For each of these contracts TPI wishes to review the information requested in RFP No. 98, i.e., copies of all bills for services, documents which contain a description of the line location of the contract, and the details of the work performed, including labor and materials.

Attachment No. 2 to this letter is a list of agreements with Government agencies shown by contract number, name of the agency, contract type, and city and state. For each of these contracts TPI wishes to review the information requested in RFP No. 118, i.e., all documents relating to any contribution or payment by any government or quasi-government entity for operating expenses, construction, upgrading, and/or maintenance of any CSXT track, facility, or structure. In addition, for each crossing agreement, TPI wishes to review the information requested in RFP No. 140, i.e., separately for each crossing, any monies received by CSXT from any other party to compensate CSXT for the use of the crossing, including, but not limited to, monies for construction, maintenance, and easement payments.

In response to RFP No. 139, CSXT referred TPI to information included in the AFEs produced in response to RFP No. 129. TPI has reviewed this information and finds that it does not provide the information requested in RFP No. 139. As a result, TPI has identified additional AFEs that it wishes to review in Jacksonville related to public improvement projects. Attachment No. 3 to

Jeff.Moreno@ThompsonHine.com Phone 202.263.4107 Fax 202.331.8330

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this letter is a list AFEs by project number, project description, city, and state. For each of these projects, TPI requests access to the detailed information requested in RFP No. 139.

RFP No. 129

Second, TPI recently provided CSXT with a list of nine projects related to TPI's RFP No. 129. See e-mail dated October 18, 2010. TPI requested that CSXT provide copies of the AFEs and all other requested information in RFP No. 129. In response to TPI's list, CSXT produced eight Adobe (.pdf) files on CSX-TPI-HC-DVD 072. Please provide the following missing information:

1. The detailed invoices for project A27047
2. All requested data for the following projects:
  - a. A19981
  - b. A34097

Please do not hesitate to contact me if you have any questions.

Sincerely,



Jeffrey O. Moreno

Enclosure

MOW and Construction Contractors

Year	Company Name	Contract #	City	State	Zip Code	Start Date	End Date	Authorized	Change Order #	Amount
08	WINSTON CONTRACTING LLC	AC08001	PINSON	AL	35128	02-Jan-08	23-May-08	\$2,354,130.30		\$0.00
						GRADING, DRAINAGE, TRACKWORK COMPLETE FOR CAPACITY PROJECT BETWEEN ANB-772.9 AND 775.3				
08	WINSTON CONTRACTING LLC	AC08001	PINSON	AL	35128	02-Jan-08	23-May-08	\$2,352,631.00		\$2,500.00
						GRADING, DRAINAGE, TRACKWORK COMPLETE FOR CAPACITY PROJECT BETWEEN ANB-772.9 AND 775.3				
08	SPOONER-CHANCE, INC	AC08002	DONALDSONVILLE	GA	39845	05-May-08	30-Jun-08	\$237,765.00		\$0.00
						grade, construct roadbed and access road, assist cat forces turnout to extend one passing siding				
08	CHEROKEE INC	AC08003	COLUMBIA	SC	292901448	05-May-08	30-Jun-08	\$312,980.00		\$0.00
						grade, clear, grub, installation drainage & construct access road for extension of slight passing siding				
08	CHEROKEE INC	AC08003	COLUMBIA	SC	292901448			\$12,840.00		\$12,840.00
						road for extension of slight passing siding				
08	CHEROKEE INC	AC08004	COLUMBIA	SC	292901448	05-May-08	30-Jun-08	\$302,101.00		\$0.00
						grading, access road, & construct track for extension of andrews passing siding				
08	CHEROKEE INC	AC08004	COLUMBIA	SC	292901448			\$7,633.40		\$7,633.40
						grading, access road, & construct track for extension of andrews passing siding				
09	POLIVKA INTERNATIONAL COMPANY	AC09002	warren	oh	44484	04-May-09	29-May-09	\$149,664.03		\$0.00
						grade for the extension of manning passing siding, located between mp #1-360.78 to 362.25				
09	POLIVKA INTERNATIONAL COMPANY	AC09002	warren	oh	44484			\$58,495.00		\$58,495.00
						grade for the extension of manning passing siding, located between mp #1-360.78 to 362.25				
09	SPOONER-CHANCE, INC	AC09003	DONALDSONVILLE	GA	39845	11-May-09	19-Sep-09	\$332,165.00		\$0.00
						grade & construct roadbed for the extension of Waterloo passing siding between mp				
08	CLAYTON D DAVENPORT TRUCKING	BC08001	GREENFIELD	MA	01301	29-Sep-08	14-Nov-08	\$331,894.00		\$0.00
						construct crib wall, excavate, install sheet piling & grade parking area for replacement of bridge over rts 10 and 202				
08	CLAYTON D DAVENPORT TRUCKING	BC08001	GREENFIELD	MA	01301			\$9,075.00		\$9,075.00
						construct crib wall, excavate, install sheet piling & grade parking area for replacement of bridge over rts 10 and 202				
08	CLAYTON D DAVENPORT TRUCKING	BC08001	GREENFIELD	MA	01301			\$8,000.00		\$8,000.00
						construct crib wall, excavate, install sheet piling & grade parking area for replacement of bridge over rts 10 and 202				
08	POLIVKA INTERNATIONAL COMPANY	BC08003	warren	oh	44484	17-Nov-08	30-Sep-09	\$3,135,809.00		\$0.00
						upgrade existing track #1 to main line track to include excavation, fill, retaining wall & modifications between mp cfp				
08	POLIVKA INTERNATIONAL COMPANY	BC08003	warren	oh	44484			\$7,520.00		\$7,520.00
						upgrade existing track #1 to main line track to include excavation, fill, retaining wall & modifications between mp cfp				
08	POLIVKA INTERNATIONAL COMPANY	BC08003	warren	oh	44484			\$31,652.00		\$31,652.00
						upgrade existing track #1 to main line track to include excavation, fill, retaining wall & modifications between mp cfp				
08	POLIVKA INTERNATIONAL COMPANY	BC08003	warren	oh	44484			\$31,652.00		\$31,652.00
						upgrade existing track #1 to main line track to include excavation, fill, retaining wall & modifications between mp cfp				
08	JMG ENTERPRISES INC	BC09002	SEWARD	PA	15954			(\$208,135.00)		(\$208,135.00)
						LINE CLEARANCE IMPROVEMENT PROJECT				
08	JMG ENTERPRISES INC	BC09002	SEWARD	PA	15954			(\$98,700.08)		(\$98,700.08)
						structural component CONSTRUCT ROADBED, GABION & RETAINING WALLS & INSTALL DRAINAGE FOR TRENTON				
08	JMG ENTERPRISES INC	BC09002	SEWARD	PA	15954			\$4,488,875.00		\$0.00
						LINE CLEARANCE IMPROVEMENT PROJECT				
08	JMG ENTERPRISES INC	BC09004	SEWARD	PA	15954	04-May-09	31-Dec-09	\$13,707.21		\$13,707.21
						construction of roadbed, pump station, & piping for trenton line clearance project				
08	JMG ENTERPRISES INC	BC09004	SEWARD	PA	15954			\$50,721.80		\$50,721.80
						construction of roadbed, pump station, & piping for trenton line clearance project				
08	JMG ENTERPRISES INC	BC09004	SEWARD	PA	15954			\$32,012.00		\$32,012.00
						line clearance project				



MOW and Construction Contractors

08	DAVA B KENYON CO	SC08028	JACKSONVILL	FL	32210	design & construct dispatching center at florence, sc	23-Jun-08	25-Jul-08	\$1,498,328.00	\$1,498,328.00
08	DAVA B KENYON CO	SC08028	JACKSONVILL	FL	32210	design & construct dispatching center at florence, sc			\$8,711.00	\$8,711.00
08	DAVA B KENYON CO	SC08028	JACKSONVILL	FL	32210	design & construct dispatching center at florence, sc			\$6,222.00	\$6,222.00
08	DAVA B KENYON CO	SC08028	JACKSONVILL	FL	32210	design & construct dispatching center at florence, sc			\$8,711.00	\$8,711.00
08	DAVA B KENYON CO	SC08028	JACKSONVILL	FL	32210	design & construct dispatching center at florence, sc			\$45,000.00	\$45,000.00
08	DAVA B KENYON CO	SC08028	JACKSONVILL	FL	32210	design & construct dispatching center at florence, sc			\$148,775.00	\$148,775.00
08	DAVA B KENYON CO	SC08028	JACKSONVILL	FL	32210	design & construct dispatching center at florence, sc			\$139,516.50	\$139,516.50
08	SPOONER-CHANCE, INC	SC08034	DONALDSONVI	GA	39845	grading for proposed shelby siding extension	23-Jun-08	25-Jul-08	\$7,184.75	\$7,184.75
08	SPOONER-CHANCE, INC	SC08034	DONALDSONVI	GA	39845	grading for proposed shelby siding extension			\$36,005.00	\$36,005.00
08	SPOONER-CHANCE, INC	SC08034	DONALDSONVI	GA	39845	grading for proposed shelby siding extension			\$860,958.00	\$860,958.00
08	SCOTT BRIDGE CO INC	SC08037	OPELIKA	AL	368032038	REPLACE EXISTING BALLAST DECK TIMBER TRESTLE WITH PRECAST CONCRETE BALLAST DECK BRIDGE	23-Jun-08	20-Dec-08	\$63,859.85	\$63,859.85
08	portec rail products, inc	SC08042	pittsburgh	pa	152368250	upgrade & install new components for floor jack system at newport news	01-Jul-08	01-Sep-08	\$812,701.00	\$812,701.00
08	abernathy construction	SC08048	glenn allen	va	23060	installation of 10"x10" cast in place concrete culvert & repairs to drainage ditch at acca yard & restore roadway	25-Aug-08	13-Mar-08	\$273,500.00	\$273,500.00
08	CARL BELT INC	SC08055	CUMBERLAND	MD	21501	DESIGN & CONSTRUCT LOGO WASH & INSPECTION FACILITY	01-Nov-08	31-Dec-08	\$341,221.00	\$341,221.00
08	CARL BELT INC	SC08055	CUMBERLAND	MD	21501	DESIGN & CONSTRUCT LOGO WASH & INSPECTION FACILITY			\$2,676,399.00	\$2,676,399.00
08	CARL BELT INC	SC08055	CUMBERLAND	MD	21501	DESIGN & CONSTRUCT LOGO WASH & INSPECTION FACILITY			\$33,881.66	\$33,881.66
08	CARL BELT INC	SC08055	CUMBERLAND	MD	21501	DESIGN & CONSTRUCT LOGO WASH & INSPECTION FACILITY			\$213,000.00	\$213,000.00
08	SOUTHEASTERN RAILROAD CONSTRUCTION INC	SC08056	austell	ga	30168	installation of turntable runway system at nashville, tn radnor yard roundhouse	03-Nov-08	09-Nov-08	\$87,500.00	\$87,500.00
08	SOUTHEASTERN RAILROAD CONSTRUCTION INC	SC08056	austell	ga	30168	installation of turntable runway system at nashville, tn radnor yard roundhouse			\$51,971.00	\$51,971.00
08	SOUTHEASTERN RAILROAD CONSTRUCTION INC	SC08056	austell	ga	30168	installation of turntable runway system at nashville, tn radnor yard roundhouse			\$517,987.00	\$517,987.00
08	DAVA B KENYON CO	SC09002	JACKSONVILL	FL	32210	DESIGN & CONSTRUCT ROADMASTER OFFICE AT MONCRIEF OFFICE BUILDING	10-Jan-08	31-Dec-08	\$1,183,990.00	\$1,183,990.00
08	coggin homes, inc	SC09014	kingstone	ga	30145	design & construct consolidated office building at hazard, ky	01-Apr-08	31-Dec-08	\$492,619.00	\$492,619.00
08	coggin homes, inc	SC09014	kingstone	ga	30145	design & construct consolidated office building at hazard, ky			\$27,913.00	\$27,913.00
08	coggin homes, inc	SC09014	kingstone	ga	30145	design & construct consolidated office building at hazard, ky			\$71,904.00	\$71,904.00
08	SCOTT BRIDGE CO INC	SC09032	OPELIKA	AL	368032038	replacement of mobile river bridge to be funded almost in its entirety by us coast guard cas afe a28292			\$164,281.30	(\$164,281.30)
08	SCOTT BRIDGE CO INC	SC09032	OPELIKA	AL	368032038	replacement of mobile river bridge to be funded almost in its entirety by us coast guard cas afe a28292			\$22,575.00	\$22,575.00
08	SCOTT BRIDGE CO INC	SC09032	OPELIKA	AL	368032038	replacement of mobile river bridge to be funded almost in its entirety by us coast guard cas afe a28292			\$0.00	\$0.00
08	SCOTT BRIDGE CO INC	SC09032	OPELIKA	AL	368032038	replacement of mobile river bridge to be funded almost in its entirety by us coast guard cas afe a28292	20-Jul-08	28-Jul-08	\$59,855,410.00	\$59,855,410.00

**MOW and Construction Contractors**

Contractor	Company Name	City	State	Contract No.	Contract Description	Start Date	End Date	Amount
09	skanska	virginia beach	va	SC08034	CONSTRUCT NEW DOUBLE TRACK TWO SPAN THROUGH PLATE GIRDER BRIDGE OVER THE N&S RAILROAD AT MP CFP 102			(\$3,378,674.00)
09	skanska	virginia beach	va	SC08034	CONSTRUCT NEW DOUBLE TRACK TWO SPAN THROUGH PLATE GIRDER BRIDGE OVER THE N&S RAILROAD AT MP CFP 102			\$0.00
09	skanska	virginia beach	va	SC08034	CONSTRUCT NEW DOUBLE TRACK TWO SPAN THROUGH PLATE GIRDER BRIDGE OVER THE N&S RAILROAD AT MP CFP 102			\$1,207,703.00
09	skanska	virginia beach	va	SC08034	CONSTRUCT NEW DOUBLE TRACK TWO SPAN THROUGH PLATE GIRDER BRIDGE OVER THE N&S RAILROAD AT MP CFP 102	01-Aug-09	28-Feb-09	\$10,471,174.00
09	MURPHREE BRIDGE CORP	TROY	AL	SC09054	construct 621'6" precast concrete trestle to replace existing timber trestle at mp csk 783 over alligator creek	01-Dec-09	31-Aug-09	\$2,239,227.00
09	MURPHREE BRIDGE CORP	TROY	AL	SC09057	replacement construction of 30' dia steel pipe pile foundations for bridge	01-Dec-09	30-Jan-10	\$286,326.00
09	MURPHREE BRIDGE CORP	TROY	AL	SC09063	construct 30' pipe pile foundation for a 334' precast concrete trestle at mp csk 618.70	01-Dec-09	31-Mar-10	\$488,991.25
10	ABUCK INC	SMYRNA	GA	SC10019	design & construct transportation building to include demo of buildings at boyles yard, birmingham, a	01-Jun-10	31-Dec-10	\$1,972,330.00
10	E-Z ELECTRIC INC	HUNTINGTON	WV	SC10027	INSTALL NEW LIGHTING SYSTEM AT CLEVELAND FUELING STATION IN CLEVELAND, OH	15-Dec-10	30-Dec-10	\$87,154.00
08	ANGELICA BORING COMPANY, INC	PITTSFORD	NY	SL08029	installation of 36" diameter steel casing by auger boring method for storm drainage at pulaski, ny	01-Aug-08	20-Sep-08	\$42,825.00
09	cw electric	ashland	ky	SL09015	install 2 100' light towers at columbus, oh	15-Nov-09	10-Dec-09	\$25,400.00
10	cw electric	ashland	ky	SL10002	install switch point lighting system at bennling yard	15-Mar-10	10-Aug-10	\$48,907.00
10	DWC MECHANICAL, INC.	CHEEKTOWAG	NY	SL10004	INSTALL HVAC SYSTEM COMPLETE READY FOR OPERATION AT YARD OFFICE, BUILDING # 794 NIAGARA FALLS, NY	01-May-10	01-Jun-10	\$38,922.00
10	world tower corporation	mayfield	ky	SL10009	construct communication tower at huntington, wv	10-May-10	10-Jun-10	\$39,629.00
10	world tower corporation	mayfield	ky	SL10010	construct communication tower at kenova, wv	10-May-10	10-Jun-10	\$39,229.00
10	MARDANT ELECTRIC	JACKSONVILL	FL	SL10013	installation of switch point lighting of junction city, ga	30-May-10	15-Oct-10	\$43,650.00
08	KUHN TRUCKING & EXCAVATING	MARSHALL	IL	ZC08002	construct & widen cat main line roadbed and construct gravel access road between mp qj-202.4 & 202.7 on the indianapolis line	02-Jun-08	30-Jun-08	\$67,118.86
08	KUHN TRUCKING & EXCAVATING	MARSHALL	IL	ZC08002	construct & widen cat main line roadbed and construct gravel access road between mp qj-202.4 & 202.7 on the indianapolis line			\$29,606.87
08	WALSH CONSTRUCTION COMPANY	CHICAGO	IL	ZC08003	CREATE PROJECT CONSTRUCT ROADBED/SUBGRADE AND RETAINING STRUCTURE FOR NEW B&OCT/BNSF CONNECTION TRACKS AT MP DIH 28	02-Sep-08	30-Apr-09	\$1,652,389.90
08	WALSH CONSTRUCTION COMPANY	CHICAGO	IL	ZC08003	CREATE PROJECT CONSTRUCT ROADBED/SUBGRADE AND RETAINING STRUCTURE FOR NEW B&OCT/BNSF CONNECTION TRACKS AT MP DIH 28			\$16,304.07
08	WALSH CONSTRUCTION COMPANY	CHICAGO	IL	ZC08003	CREATE PROJECT CONSTRUCT ROADBED/SUBGRADE AND RETAINING STRUCTURE FOR NEW B&OCT/BNSF CONNECTION TRACKS AT MP DIH 28			\$174,452.00
10	CRANEMASTERS INC	RICHMOND	VA	ZC10002	signal and crossover improvements segment a 39th & 52nd street interlockings create project	15-Feb-10	30-Aug-10	\$286,784.00
10	GREAT LAKES CONSTRUCTION CO	HINCKLEY	OH	ZC10003	grading for cat lead track and demo of 2 structures for loop track to serve suncoke	01-Jul-10	17-Nov-10	\$695,033.00
10	GREAT LAKES CONSTRUCTION CO	HINCKLEY	OH	ZC10003	grading for cat lead track and demo of 2 structures for loop track to serve suncoke			\$2,223.00



Agency	Project Description	Start Date	End Date	Agency	Project Description	Start Date	End Date
DOT1824502L	ACTIVE LEGACY	8/27/1988	8/27/1988	FL	XGPUB. CROSSING - PUBLIC ROADWAY	8/27/1988	8/27/1988
DOT1825589W	ACTIVE LEGACY	8/7/1972	8/7/1972	FL	XGPUB. CROSSING - PUBLIC ROADWAY	8/7/1972	8/7/1972
CS03033802	ACTIVE LEGACY	10/29/1988	10/29/1988	FL	XGPUB. CROSSING - PUBLIC ROADWAY	10/29/1988	10/29/1988
DOT1821275X	ACTIVE LEGACY	7/1/1953	7/1/1953	FL	XGPUB. CROSSING - PUBLIC ROADWAY	7/1/1953	7/1/1953
DOT1822417P	ACTIVE LEGACY	12/16/1949	12/16/1949	FL	XGPUB. CROSSING - PUBLIC ROADWAY	12/16/1949	12/16/1949
DOT1830257W	ACTIVE LEGACY	1/1/1968	1/1/1968	FL	XGPUB. CROSSING - PUBLIC ROADWAY	1/1/1968	1/1/1968
DOT1828148K	ACTIVE LEGACY	6/5/1978	6/5/1978	FL	XGPUB. CROSSING - PUBLIC ROADWAY	6/5/1978	6/5/1978
DOT1831725A	ACTIVE LEGACY	8/25/1987	8/25/1987	FL	XGPUB. CROSSING - PUBLIC ROADWAY	8/25/1987	8/25/1987
SAL050365	ACTIVE LEGACY	11/24/1982	11/24/1982	FL	XGPUB. CROSSING - PUBLIC ROADWAY	11/24/1982	11/24/1982
DOT1830340	ACTIVE LEGACY	3/10/1955	3/10/1955	FL	XGPUB. CROSSING - PUBLIC ROADWAY	3/10/1955	3/10/1955
DOT1818139K	ACTIVE LEGACY	7/29/1974	7/29/1974	FL	XGPUB. CROSSING - PUBLIC ROADWAY	7/29/1974	7/29/1974
DOT1834509R	ACTIVE LEGACY	9/1/1987	9/1/1987	FL	XGPUB. CROSSING - PUBLIC ROADWAY	9/1/1987	9/1/1987
DOT1827074C	ACTIVE LEGACY	6/8/1987	6/8/1987	FL	XGPUB. CROSSING - PUBLIC ROADWAY	6/8/1987	6/8/1987
DOT1834013U	ACTIVE LEGACY	9/10/1991	9/10/1991	FL	XGPUB. CROSSING - PUBLIC ROADWAY	9/10/1991	9/10/1991
LN 04194802	ACTIVE LEGACY	2/8/1955	2/8/1955	FL	XGPUB. CROSSING - PUBLIC ROADWAY	2/8/1955	2/8/1955
DOT1837201	ACTIVE LEGACY	9/19/1976	9/19/1976	FL	XGPUB. CROSSING - PUBLIC ROADWAY	9/19/1976	9/19/1976
DOT1831023Y	ACTIVE LEGACY	9/9/1986	9/9/1986	FL	XGPUB. CROSSING - PUBLIC ROADWAY	9/9/1986	9/9/1986
DOT1833339R	ACTIVE LEGACY	12/15/2005	12/15/2005	FL	XGPUB. CROSSING - PUBLIC ROADWAY	12/15/2005	12/15/2005
DOT1824589F	ACTIVE LEGACY	11/29/1984	11/29/1984	FL	XGPUB. CROSSING - PUBLIC ROADWAY	11/29/1984	11/29/1984
SG12283095	ACTIVE LEGACY	8/25/1978	8/25/1978	FL	XGPUB. CROSSING - PUBLIC ROADWAY	8/25/1978	8/25/1978
DOT183244W	ACTIVE LEGACY	3/19/1928	3/19/1928	FL	XGPUB. CROSSING - PUBLIC ROADWAY	3/19/1928	3/19/1928
DOT1840704K	ACTIVE LEGACY	2/22/1960	2/22/1960	FL	XGPUB. CROSSING - PUBLIC ROADWAY	2/22/1960	2/22/1960
SG1018883	ACTIVE LEGACY	11/25/1974	11/25/1974	FL	XGPUB. CROSSING - PUBLIC ROADWAY	11/25/1974	11/25/1974
DOT1830590M	ACTIVE LEGACY	9/19/2001	9/19/2001	FL	XGPUB. CROSSING - PUBLIC ROADWAY	9/19/2001	9/19/2001
CR 148531300	ACTIVE LEGACY	12/11/1967	12/11/1967	FL	XGPUB. CROSSING - PUBLIC ROADWAY	12/11/1967	12/11/1967
CS1826197	ACTIVE LEGACY	1/22/1978	1/22/1978	FL	XGPUB. CROSSING - PUBLIC ROADWAY	1/22/1978	1/22/1978
DOT146828	ACTIVE LEGACY	2/1/2001	2/1/2001	FL	XGPUB. CROSSING - PUBLIC ROADWAY	2/1/2001	2/1/2001
DOT154668M	ACTIVE LEGACY	10/30/1988	10/30/1988	FL	XGPUB. CROSSING - PUBLIC ROADWAY	10/30/1988	10/30/1988
DOT1544951R	ACTIVE LEGACY	12/4/1968	12/4/1968	FL	XGPUB. CROSSING - PUBLIC ROADWAY	12/4/1968	12/4/1968
CR 207755	ACTIVE LEGACY	5/14/1976	5/14/1976	FL	XGPUB. CROSSING - PUBLIC ROADWAY	5/14/1976	5/14/1976
DOT142237E	ACTIVE LEGACY	3/1/1985	3/1/1985	FL	XGPUB. CROSSING - PUBLIC ROADWAY	3/1/1985	3/1/1985
DOT24420M	ACTIVE LEGACY	10/27/2008	10/27/2008	FL	XGPUB. CROSSING - PUBLIC ROADWAY	10/27/2008	10/27/2008
CR 121070	ACTIVE LEGACY	7/8/1959	7/8/1959	FL	XGPUB. CROSSING - PUBLIC ROADWAY	7/8/1959	7/8/1959
DOT128794C	ACTIVE LEGACY	10/30/2008	10/30/2008	FL	XGPUB. CROSSING - PUBLIC ROADWAY	10/30/2008	10/30/2008
DOT1546459R	ACTIVE LEGACY	11/20/1978	11/20/1978	FL	XGPUB. CROSSING - PUBLIC ROADWAY	11/20/1978	11/20/1978
DOT1546453C	ACTIVE LEGACY	5/4/2006	5/4/2006	FL	XGPUB. CROSSING - PUBLIC ROADWAY	5/4/2006	5/4/2006
DOT2346500	ACTIVE LEGACY	1/19/1995	1/19/1995	FL	XGPUB. CROSSING - PUBLIC ROADWAY	1/19/1995	1/19/1995
DOT186227C	ACTIVE LEGACY	10/24/2007	10/24/2007	FL	XGPUB. CROSSING - PUBLIC ROADWAY	10/24/2007	10/24/2007
DOT187458W	ACTIVE LEGACY	12/22/1982	12/22/1982	FL	XGPUB. CROSSING - PUBLIC ROADWAY	12/22/1982	12/22/1982
DOT154633P	ACTIVE LEGACY	10/22/1978	10/22/1978	FL	XGPUB. CROSSING - PUBLIC ROADWAY	10/22/1978	10/22/1978
DOT1545061G	ACTIVE LEGACY	2/28/1995	2/28/1995	FL	XGPUB. CROSSING - PUBLIC ROADWAY	2/28/1995	2/28/1995
DOT11419388	ACTIVE LEGACY	1/1/1900	1/1/1900	FL	XGPUB. CROSSING - PUBLIC ROADWAY	1/1/1900	1/1/1900
CR 030029	ACTIVE LEGACY	6/8/1905	6/8/1905	FL	XGPUB. CROSSING - PUBLIC ROADWAY	6/8/1905	6/8/1905
CR 128700	ACTIVE LEGACY	11/20/1981	11/20/1981	FL	XGPUB. CROSSING - PUBLIC ROADWAY	11/20/1981	11/20/1981
DOT122893C	ACTIVE LEGACY	8/6/2003	8/6/2003	FL	XGPUB. CROSSING - PUBLIC ROADWAY	8/6/2003	8/6/2003
DOT141418Y	ACTIVE LEGACY	8/15/1988	8/15/1988	FL	XGPUB. CROSSING - PUBLIC ROADWAY	8/15/1988	8/15/1988
DOT1151493F	ACTIVE LEGACY	4/18/1978	4/18/1978	FL	XGPUB. CROSSING - PUBLIC ROADWAY	4/18/1978	4/18/1978
DOT1819430V	ACTIVE LEGACY	4/29/2008	4/29/2008	FL	XGPUB. CROSSING - PUBLIC ROADWAY	4/29/2008	4/29/2008
DOT142418V	ACTIVE LEGACY	11/20/1985	11/20/1985	FL	XGPUB. CROSSING - PUBLIC ROADWAY	11/20/1985	11/20/1985
DOT1152089F	ACTIVE LEGACY	12/19/2002	12/19/2002	FL	XGPUB. CROSSING - PUBLIC ROADWAY	12/19/2002	12/19/2002
CO 030717	ACTIVE LEGACY	6/8/1944	6/8/1944	FL	XGPUB. CROSSING - PUBLIC ROADWAY	6/8/1944	6/8/1944
DOT128663V	ACTIVE LEGACY	1/17/1988	1/17/1988	FL	XGPUB. CROSSING - PUBLIC ROADWAY	1/17/1988	1/17/1988
LN 083116	ACTIVE LEGACY	1/10/1978	1/10/1978	FL	XGPUB. CROSSING - PUBLIC ROADWAY	1/10/1978	1/10/1978
DOT1242263H	ACTIVE LEGACY	8/8/1980	8/8/1980	FL	XGPUB. CROSSING - PUBLIC ROADWAY	8/8/1980	8/8/1980
DOT183088001	ACTIVE LEGACY	11/6/1978	11/6/1978	FL	XGPUB. CROSSING - PUBLIC ROADWAY	11/6/1978	11/6/1978
CR 033057	ACTIVE LEGACY	1/27/1920	1/27/1920	FL	XGPUB. CROSSING - PUBLIC ROADWAY	1/27/1920	1/27/1920
DOT124163E	ACTIVE LEGACY	4/22/2009	4/22/2009	FL	XGPUB. CROSSING - PUBLIC ROADWAY	4/22/2009	4/22/2009
CS0303278	ACTIVE LEGACY	12/28/1958	12/28/1958	FL	XGPUB. CROSSING - PUBLIC ROADWAY	12/28/1958	12/28/1958
CR 060750100	ACTIVE LEGACY	6/28/1929	6/28/1929	FL	XGPUB. CROSSING - PUBLIC ROADWAY	6/28/1929	6/28/1929
CR 048448	ACTIVE LEGACY	11/27/1928	11/27/1928	FL	XGPUB. CROSSING - PUBLIC ROADWAY	11/27/1928	11/27/1928
CR 048548	ACTIVE LEGACY	8/27/1928	8/27/1928	FL	XGPUB. CROSSING - PUBLIC ROADWAY	8/27/1928	8/27/1928
CR 048782100	ACTIVE LEGACY	12/8/1928	12/8/1928	FL	XGPUB. CROSSING - PUBLIC ROADWAY	12/8/1928	12/8/1928
DOT152807R	ACTIVE LEGACY	7/19/1981	7/19/1981	FL	XGPUB. CROSSING - PUBLIC ROADWAY	7/19/1981	7/19/1981
CR 050963000	ACTIVE LEGACY	7/31/1929	7/31/1929	FL	XGPUB. CROSSING - PUBLIC ROADWAY	7/31/1929	7/31/1929

FL BARTON  
 FL LLOYD  
 FL WEST PALM BEACH  
 FL JACKSONVILLE  
 FL KRISHNIMEE  
 FL ELLORREE  
 FL LEEBURG  
 FL PENSACOLA  
 FL TAMPA  
 FL LIVE OAK  
 FL CORDOVA  
 FL MOUNT OLIVE  
 FL FLOYDALE  
 FL GAINESVILLE  
 FL CLARKTON  
 FL PACE JUNCTION  
 FL PENSACOLA  
 FL LAMBERTON  
 FL CARTERSVILLE  
 FL TAMPA  
 FL SANFORD  
 FL NAHUNTA  
 FL HENDERSON  
 FL SPEED  
 FL WAKE FOREST  
 FL MADISON  
 FL OAKTOWN  
 FL SWISS  
 FL HAMDON  
 FL STRAIGHT CREEK  
 FL INDIANAPOLIS  
 FL TERRE HAUTE  
 FL LANSING  
 FL FAIRLAND  
 FL CAREY  
 FL MOUNT VERNON  
 FL EFFINGHAM  
 FL HOLLAND  
 FL ROCKDALE  
 FL THORNTON  
 FL INDIANAPOLIS  
 FL BEDFORD  
 FL INDIANAPOLIS  
 FL BROCK PARK  
 FL DANVILLE  
 FL INDIANAPOLIS  
 FL GAULLEY BRIDGE  
 FL CRAWFORDSVILLE  
 FL OAK HILL  
 FL GALION  
 FL LORAIN  
 FL FREDERICKTOWN  
 FL LOUISA  
 FL KY  
 FL SALT ROCK  
 FL CAMPBELLSVILLE  
 FL TERRE HAUTE  
 FL ROCHESTER  
 FL UTICA  
 FL NEWPORT NEWS  
 FL PHILADELPHIA  
 FL MEXICO  
 FL THORNTON  
 FL PORT EMMEN  
 FL SAVANNAH  
 FL CANAWAN  
 FL PURDYTS



CSXT PUBLIC IMPROVEMENT PROJECT AFES

Project Number	Type Code	Project Description	City Name	State Code	Project Pa Approved Date	Project Closed Date	Project Completion Date	Dollars
A31228	PI	CSXT Contribution To Mississippi Highway-Rail Grade Crossing Corridor Projects. Closure and Bitterments	PASCAGOULA	MS	11/15/2004			\$376,875
A39089	PI	Install Signs on Passive Public Road Crossings in the State of Kentucky		KY	2/15/2010			\$304,842
A39218	PI	Install Signs on Passive Public Road Crossings in the State of Georgia		GA	3/29/2010			\$299,390
A36208	PI	STATE OF SOUTH CAROLINA -INSTALL STOP SIGNS ON PASSIVE PRIVATE ROAD CROSSINGS IN THE STATE OF SOUTH CAROLINA		SC	11/27/2006			\$294,228
A39085	PI	Install Signs on Passive Public Road Crossings in the State of SOUTH CAROLINA		SC	2/11/2010			\$247,941
A38212	PI	INSTALL NEW CROSSBUCK, YIELD, MULTIPLE TRACKS (AS REQUIRED), AND EMERGENCY "CALL CSX" SIGNS AT ALL PUBLIC PASSIVE GRADE ROAD CROSSINGS		AL	3/22/2010			\$185,292
A36222	PI	Install stop signs on passive private road crossings in the State of Georgia.		GA	11/29/2006	2/10/2010	8/27/2009	\$184,967
A36944	PI	Reconstruction of Retaining Wall along Oakes Road adjacent to CSXT	LLOYD	NY	7/2/2007	12/28/2009		\$63,687
A38092	PI	Installation of automatic flashing signal lights and bell to include gates and CVT track circuitry at UT Farm Road. Cost to be borne equally by CSXT, the State of Tennessee, and Franklin County	ESTILL SPRINGS	TN	12/17/2008	8/3/2009	8/3/2009	\$50,368
A39083	PI	Install Signs on Passive Public Road Crossings in the State of TENNESSEE		TN	2/11/2010			\$48,712
A38091	PI	Installation of flashing lights and gates at Buckeye Road. Costs to be borne equally by CSXT, the State of Tennessee, and the Town of Unicoi.	UNICOI	TN	12/17/2008	2/11/2009	2/11/2009	\$38,286
A37326	PI	OP# KY0179 HORSE CAVE, KY. (ROWLETT'S), HART COUNTY. UPGRADE WARNING DEVICES AT BUNNELL/CR 1181 (DOT 343617/DMP 000 75.38). CSX 10% SHARE OF TOTAL PROJECT IS \$24,727.20	HORSE CAVE	KY	12/26/2007			\$21,797
A37327	PI	OP# KY0138 LAGRANE, KY. OLDHAM COUNTY, INSTALL WARNING DEVICES AT FIRST STREET (DOT 345591/KMP 00T 26.84) CSX 10% SHARE OF TOTAL PROJECT IS \$18,256.90	LAGRANGE	KY	12/29/2007	9/9/2008	9/11/2008	\$18,639
A38145	PI	OP# OH0709 - PUCO ORDERED UPGRADE OF WARNING DEVICES AT CR32 IN BEVERLY, OHIO CSXT CONTRIBUTION IS 10%.	BEVERLY	OH	1/23/2009	2/10/2010	2/11/2010	\$15,129
A38403	PI	OP# OH0689 - WARNING DEVICE UPGRADE AT THE 4TH STREET CROSSING IN HAMILTON, BUTLER COUNTY, OHIO. CSX CONTRIBUTION IS 10% OF TOTAL PROJECT COSTS	HAMILTON	OH	4/6/2009	2/10/2010	2/11/2010	\$15,089
A37277	PI	OP#KY0185 TRENTON, KY. INSTALL WARNING DEVICES AT TRENTON-TRESS RD/KY 475 (DOT 345238/SMP 00H 224.27) CSX 10% SHARE OF THE TOTAL PROJECT IS \$18,149.70.	TRENTON	KY	12/11/2007	2/4/2009	2/4/2009	\$14,545
A37993	PI	OP#KY0115 OWENSBORO, KY. INSTALL FLS&G @ 5TH AVE. CSX 10% SHARE OF \$163,604.	OWENSBORO	KY	8/27/2008	2/10/2009	2/10/2009	\$14,278
A38144	PI	OP# OH0708 - UPGRADE WARNING DEVICES WITH STYLE 'C' ON CR-60 IN LOWELL, WASHINGTON COUNTY, OHIO. PUCO ORDERED PARTICIPATION OF 10%	LOWELL	OH	1/23/2009	2/10/2010	2/11/2010	\$13,804

**CSXT PUBLIC IMPROVEMENT PROJECT AFES**

Attachment No 3  
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Project Number	Project Type Code	Project Description	City Name	State Code	Project Pa Approved Date	Project Closed Date	Project Completion Date	Dollars
A38715	PI	UPGRADE ALL INCANDESCENT LIGHTS TO LEDS AT IL-160 IN TRENTON, IL AND FERRIN ROAD IN FERRIN, IL. CSXT TO PAY FOR LABOR AND DESIGN. IDOT TO PAY FOR MATERIAL ONLY WITH IL0273.	TRENTON	IL	9/8/2009		8/27/2010	\$13,687
A37206	PI	OP#KY0121 LAGRANGE, OLDHAM COUNTY, KY. INSTALL 2 GATE SYSTEM ON TH AVE (DOT 345582/MP 00T 26.48, CSXT 10% CONTRIBUTION FOR PROJECT.	LA GRANGE	KY	11/12/2007	2/10/2009	2/10/2009	\$13,445
A36545	PI	OP#KY0152 OWENSBORO, KY. INSTALL WARNING DEVICES ON US 60 (DOT 344296C/KY0152) CSX 10% SHARE OF TOTAL COST OF \$209,252.00	OWENSBORO	KY	3/8/2007	1/16/2009	9/11/2008	\$13,425
A36548	PI	OP#KY0156 LOUISVILLE, KY. INSTALL WARNING DEVICES ON KY1065 (DOT 3440197/KY00156 CSX 10% SHARE OF TOTAL COST OF \$185,573.00	LOUISVILLE	KY	3/8/2007	9/2/2008	9/11/2008	\$12,886
A32617	PI	OP#IL0191 EFFINGHAM, IL. FUNKHOUSER RD. INSTALL AFL&G CONTROLLED BY CWT CIRCUITRY (DOT 548453C/IL0191) CSX 5% SHARE OF TOTAL COST OF \$12,324.00.	EFFINGHAM	IL	5/1/2006	8/29/2008	9/11/2008	\$12,288
A31751	PI	OP#IL0185 HAGERSTOWN, IL. 10% CONTRIBUTION FOR GRADE CROSSING UPGRADES ON TR 152	VANDALIA	IL	6/15/2005	8/29/2008	9/11/2008	\$12,092
A32537	PI	OP#KY0133 AUGUSTA, KY. INSTALL FLS&G WARNING DEVICES (DOT 228324P/KY0133) CSX 10% SHARE OF TOTAL COST OF \$174,623.00.	AUGUSTA	KY	4/17/2006	9/11/2007	9/11/2007	\$11,522
A38068	PI	OP#OH0704 - VALLEY CITY, OH - Subsidy Stipulation effort: Install FLS&G at Myrtle Hill Rd. CSXT 10% participation as per PUCO order.	VALLEY CITY	OH	1/25/2008	2/10/2010	1/28/2009	\$11,471
A37010	PI	OP#OH0605 MARYSVILLE, OH. CSXT 10% CONTRIBUTION TO INSTALL NEW FLS&G AT 5TH ST., WATKINS ROAD.	MARYSVILLE	OH	8/9/2007	8/19/2008	8/16/2008	\$10,782
A32586	PI	OP#IL0186 GREENUP, IL. LYNN RD. INSTALL FLS&G CONTROLLED BY CWT PER STATE REQUEST CROSSBUCKS EXISTING (DOT 546382H/IL0186) CSX 5% SHARE OF TOTAL COST OF \$242,454.00.	GREENUP	IL	4/28/2006	8/19/2008	8/19/2008	\$8,353
A39008	PI	CSX 5% CONTRIBUTION TOWARDS INSTALLATION OF AUTOMATIC FLASHING LIGHTS AND GATES CONTROLLED BY CWT AND EQUIP W/ EVENT RECORDER AT METCALF RD HIGHWAY RAIL GRADE CROSSING NEAR IUUKA, MARION COUNTY, IL. IDOT CONTRIBUTION THROUGH IL0276.	IUUKA	IL	1/25/2010		10/17/2010	\$5,535
A38938	PI	CSX CONTRIBUTION TOWARDS THE INSTALLATION OF AUTOMATIC FLASHING LIGHTS, GATES AND BELL, CONTROLLED BY CWT AND EQUIPPED WITH AN EVENT RECORDER, AT THE 1350E ROAD HIGHWAY-RAIL GRADE CROSSING IN JEWETT, CUMBERLAND CO, ILLINOIS	JEWETT	IL	12/10/2009			\$2,986
A39164	PI	IL0275 - Installation of flashing lights and gates with CWT at Burdick Rd/TR 439 - DOT 152892V, Clay City/Stanford Twp, Clay County, IL. CSXT 5% contribution to include PE, Admin and Labor.	CLAY CITY	IL	3/15/2010			\$2,647
A39412	PI	OP# OH0782 - Middleburg Heights, Cuyahoga County, Ohio ( Main Street ) - Replace the existing crossbucks with new FLS&G and constant warning time equipment.	MIDDLEBURG HEIGHTS	OH	5/28/2010			\$698

**EXHIBIT 6**

**REDACTED**

**HIGHLY CONFIDENTIAL EXHIBIT**