

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. EP 711 (SUB-NO. 2)

RECIPROCAL SWITCHING FOR INADEQUATE SERVICE

REPLY COMMENTS OF CSX TRANSPORTATION, INC.

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CSX Transportation, Inc. (“CSXT”) urges the Board to adopt a workable rule that creates a clearer path for forced switching orders under 49 U.S.C. § 11102(c) where such an order would correct a service problem. CSXT also supports the Board’s efforts to create a standardized set of metrics that could be used as evidence in reciprocal switching proceedings or to inform the Board more generally. But some key amendments should be made to the Notice of Proposed Rulemaking (“NPRM”)¹ to conform the final rule to the statutory standard requiring “actual necessity or compelling reason” for a forced switch and to better advance the Board’s core goal of creating an accessible remedy for inadequate service. CSXT’s opening comments identified a number of suggested improvements to the rule and the proposed metrics that would conform to the statute and improve the accuracy of the Board’s findings.

These Reply Comments reiterate four key principles that should guide the Board’s work in finalizing the proposed rule.

First, any final rule in this proceeding must account for the statutory constraints that Congress placed on the Board’s ability to impose forced switching as a remedy. Many comments have been written as though Congress provided no guidance as to the Board’s application of § 11102(c), and thus that the Board is free to adopt whatever rule most accords with the commenters’ policy preferences. Shipper associations who consistently advocated in Ex Parte 711 (Sub-No. 1) for the

¹ Notice of Proposed Rulemaking, *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2) (STB served Sept. 7, 2023).

Board to adopt a liberal regime of forced switching on demand for wide swaths of traffic now advocate in this proceeding for an approach in which any 6-week metric dip would automatically trigger decade-long forced switching, without any need to demonstrate an actual service problem that could be solved by a forced switch. But Congress has limited § 11102(c) to situations where the Board finds an actual necessity or compelling reason to order a switch, and the Board cannot lawfully adopt an approach in which it would not make such a finding in each proceeding before it.

Second, in order to conform to this statutory standard, the Board should ensure that any final rule in this proceeding only provides forced switches where there is an actual service failure that would be remedied by a forced switch. In doing so, the Board must recognize that metrics alone should not be treated as definitive evidence of whether service is good or bad. As CSXT and other commenters showed on opening, there are many instances where metrics can dip for reasons unrelated to service quality.² And the data analysis in the Association of American Railroads' ("AAR's") reply comments shows that the transit time metric is a deeply unreliable guide to inadequate service—in 2023 alone, over 88% of lanes experienced an increase or decrease to transit time of over 20% for some 12-week

² Opening Comments of CSX Transportation, Inc., *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2), at 25-26 (filed Nov. 7, 2023) ("CSXT Opening Comments").

period.³ Transit time fluctuations are an inherent aspect of real-world railroading—not an indicia of service problems. The Board should adopt a flexible approach that would allow shippers to submit any evidence that they believe shows a service failure warranting a forced switch (including metrics, if desired), and allow railroads to respond with any evidence that they believe is relevant to rebut that evidence. The attached Reply Verified Statement of Casey Albright identifies some of the factors that could temporarily affect service metrics and that the Board should consider when determining whether there is a compelling need for a forced switch.

Third, the Board should adopt procedures that permit the participation of potentially affected stakeholders and ensure the consideration of all implications of a forced switching order. Affected labor organizations should have notice and a right to be heard, as should affected passenger, commuter railroads, and freight railroads, including short lines. The Board cannot effectively determine whether forced switching orders are in the public interest if stakeholders whose interests could be impacted do not have a chance to be heard.

Fourth, the Board should take the necessary step of engaging with parties to craft standardized service metrics that are fair and consistent. Developing new standardized metrics is a worthy long-term project, but there are many issues that

³ Reply Comments of the Association of American Railroads, *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2) (filed Dec. 20, 2023), Reply Verified Statement of Michael R. Baranowski and Nathaniel S. Zebrowski, at 7, Table 1 (“AAR Transit Time Analysis”).

the Board needs to resolve to ensure apples-to-apples comparisons.⁴ It will take time for the Board to work through standardization issues, including meetings with stakeholders to refine key elements, and the Board should allow time for railroads to adjust their systems to reflect the final metric guidance. The Verified Statement of John Maio presents some analysis that CSXT has done internally about the time and effort that would be required to implement the rule as currently proposed. If the Board adopts CSXT's proposal for a flexible evidentiary process, it can proceed to adopt a process for considering petitions seeking forced switching as a remedy for inadequate service while it simultaneously works to finalize standardized metrics.

Finally, CSXT provides suggested regulatory language that implements CSXT's comments and would result in a workable and effective rule that complies with the statutory scheme.

I. ANY FORCED SWITCHING RULE NEEDS TO CONFORM TO THE STATUTORY COMPELLING NEED STANDARD.

Several commenters argued that the Board should make various adjustments to the NPRM to make it easier for petitioners to obtain forced switching prescriptions. Some argued for changes to service performance thresholds so as to reduce the threshold needed to obtain relief.⁵ Some suggested that the time period

⁴ See the Verified Statement of Michael Cheatham attached to CSXT's Opening Comments for a discussion of some of these issues.

⁵ See, e.g., National Stone, Sand & Gravel Association Comments, *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2), at 7 (filed Nov. 7, 2023) ("NSSGA Opening Comments") (Original ETA threshold should be "no less than 80%"); Comments of American Fuel & Petrochemical Manufacturers, *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2), at 11

for a metric dip should be a mere 6 weeks rather than 12.⁶ Others argued for lengthy prescriptions stretching 5-10 years after a single 6-week metric dip—or even for permanent relief.⁷ However, a rule incorporating these adjustments would not comport with Congress’s instruction that forced switching only be imposed where there is an actual necessity or compelling reason for it.

Congress made clear that the public interest prong of § 11102(c) is not a blank slate that permits imposition of forced switching on demand. Rather, § 11102(c) was enacted with specific instructions that the “long-established standards” used by the agency to grant joint use of terminal facilities under what is now § 11102(a)⁸ must be used when deciding whether to prescribe a forced switch under § 11102(c).⁹ Those “long-established standards” require (i) a showing of “some

(filed Nov. 7, 2023) (“AFPM Opening Comments”) (“a 15% increase in transit time would be the absolute highest increase in transit times that should be permitted”); Opening Comments submitted by The Coalition Associations, *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2), at 33 (filed Nov. 7, 2023) (“Coalition Associations Opening Comments”) (“the Board should set the adequacy threshold for year-over-year transit-time increases at 15%”).

⁶ See, e.g., AFPM Opening Comments at 6, 9, 12 (asking the Board to reduce the 12-week measuring window to 6 weeks).

⁷ See, e.g., Opening Comments submitted by Diversified CPC International, Inc., *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2), at 11 (filed Nov. 7, 2023) (“Diversified CPC Opening Comments”) (suggesting a term of five to ten years); Coalition Associations Opening Comments at 47 (same); *id.* at 57 (arguing for “permanent” forced switching if a railroad has a service inadequacy within 12 months of a prescription being terminated).

⁸ Section 11102(a) was previously 49 U.S.C. § 11103(a), and before that, section 3(4) of the Interstate Commerce Act.

⁹ H.R. Rep. No. 96–1430, at 116 (1980) (“The standard ‘practicable and in the public interest’ is the same standard the Commission has applied in considering whether to order the joint use of terminal facilities.”); S. Rep. No. 96–470, at 42 (1979)

actual necessity or some compelling reason” for the forced switch,¹⁰ and (ii) a determination that the switch would be in the public interest in light of “not only the interests of the particular shipper[] [requesting the relief] but also the interests of the carriers and of the general public.”¹¹

As CSXT noted in opening comments, an actual service failure that could be cured by a forced switch certainly could constitute the sort of “actual necessity” that

(same); *Cent. States Enters., Inc. v. ICC*, 780 F.2d 664, 668 (7th Cir. 1985) (“Congress intended that the standard to be used in applying the ‘practicable and in the public interest’ test be ‘the same standard the Commission has applied in considering whether to order the joint use of terminal facilities.’”).

¹⁰ *Jamestown, N.Y. Chamber of Com. V. Jamestown, Westfield & Nw. R.R. Co.*, 195 I.C.C. 289, 292 (1933) (“The expression ‘in the public interest’ means more than a mere desire on the part of shippers or other interested parties for something that would be convenient or desirable to them. . . . [S]ome actual necessity or some compelling reason must first be shown before we can find such action in the public interest.”); *Del. & Hudson Ry. Co. v. Consol. Rail Corp.—Reciprocal Switching Agreement*, 367 I.C.C. 718, 720 (1983) (“an affirmative finding that joint terminal use is in the public interest requires a showing of ‘some actual necessity or compelling reason,’ meaning that ‘more than a mere desire on the part of shippers or other interested parties for something that would be convenient or desirable to them’ must be shown.”); *Cent. States*, 780 F.2d at 678 (“some actual necessity or some compelling reason must first be shown before [the agency] can find such action in the public interest” under what is now § 11102(c)(1)).

¹¹ *Mfrs. Ass’n of York, Pa., v. Pa. R.R. Co.*, 73 I.C.C. 40, 49 (1922); *Jamestown*, 195 I.C.C. at 292 (same); *Del. & Hudson Ry.*, 367 I.C.C. at 720 (same); *accord Hastings Com. Club v. Chi., Milwaukee & St. Paul Ry. Co.*, 107 I.C.C. 208, 217 (1926) (concluding that, after “a severe car shortage on the Milwaukee, which had temporarily compelled the mill . . . to reduce its output,” complainant mill was seeking service by an additional railroad to “have the advantage of the Burlington’s car supply in the event of future car shortages,” but that such a mere desire did not justify forced joint use of terminal facilities where the record showed significant cost and operational complexities to the impacted carriers that outweighed the benefit to a small number of shippers).

Congress contemplated.¹² But the NPRM would not require proof of an actual service failure or that forced switching would remedy such a failure; all that would be required would be a metric dip at some point in time.¹³ That is inconsistent with the statute. Any proposed adjustments which would increase metric thresholds, shorten the measurement period, or lengthen the term of the awarded switch would only exacerbate this inconsistency. Congress was crystal clear that forced reciprocal switching is a serious remedy that should be limited to scenarios where there is an actual necessity or compelling need for the forced switch.¹⁴

The statutory standard of “actual necessity or some compelling reason” is a guidepost that the Board can use to create an effective final rule that aligns with Congress’s intent. “[A]ctual necessity or some compelling reason” means that forced switching should only be triggered by actual service problems—not by metric dips that do not correspond to an actual service failure.¹⁵ It means that the Board needs to consider all relevant evidence to explain any service metric change or alleged service problem, and not unduly limit itself to a restricted list of affirmative

¹² CSXT Opening Comments at 31-33.

¹³ *See* NPRM at 42 (proposed § 1145.6(a)(2)).

¹⁴ Congress spoke even more clearly when it provided that the Board is not to regulate service provided under transportation contracts. *See* 49 U.S.C. § 10709(c). The position of some commenters that it would not violate this command for the Board to use allegedly deficient service provided under a contract as the basis for prescribing a forced switch has no basis in agency precedent or the plain statutory text. CSXT joins in the AAR’s comments that thoroughly discredit the notion that there is a lawful way for the Board to use § 11102(c) to regulate service provided under transportation contracts, including by using service provided under transportation contracts as a basis for taking any regulatory action.

¹⁵ CSXT Opening Comments at 12.

defenses.¹⁶ It means that the Board needs to find that a forced switch would mitigate the alleged service problem—because a service problem cannot create a compelling need for a switch if the switch would not solve the service problem.¹⁷ And it means that any forced switch prescription needs to be tailored to the length of the service issue and that there should be a fair opportunity to remove the prescription once the need for the switch has passed.¹⁸ In Section V below, CSXT offers regulatory language to show how the proposed rule could be revised along these lines.

II. METRICS ALONE CANNOT DEMONSTRATE A SERVICE INADEQUACY REQUIRING A FORCED SWITCH.

As CSXT explained on opening, metrics are valuable tools for railroads, shippers, and the Board alike. Railroads can, and do, utilize metrics to manage their networks and identify issues for response, shippers can use them to monitor their service, and the Board can consider metrics when it evaluates service quality. But no single metric can be conclusive evidence of service inadequacy.¹⁹

Opening comments filed by other parties revealed no new evidence to question that conclusion. While many commenters argued for aggressive metric thresholds, virtually none provided evidence that would support a finding that any

¹⁶ *Id.* at 32.

¹⁷ *Id.* at 34.

¹⁸ *Id.* at 49-51

¹⁹ *Id.* at 13-14.

lane that dipped below those thresholds would necessarily have inadequate service—let alone that forced switching would, or even could, remedy that service.

First, neither the NPRM nor any party has produced any evidence suggesting that systemwide measures of network performance from Ex Parte 770 (Sub-No. 1) are meaningful on a lane-by-lane basis. Commenters appear to assume that achievement of a systemwide average across thousands of lanes means that any individual lane that falls below that average—even for a brief period—is by definition receiving unacceptably poor service that requires Board intervention. This conclusion is unsupported given such an apples-to-oranges comparison.

Second, the metrics reported in EP 770 (Sub-No. 1) are materially different from the metrics proposed in the NPRM. As the Verified Statement of Michael Cheatham attached to CSXT’s Opening Comments explained, the Trip Plan Performance (TPP) metric that CSXT uses for Ex Parte 770 reporting differs in several important ways from the NPRM’s proposal for the Original ETA metric.²⁰ And the Customer Switch Data (CSD) metric that CSXT uses for local service reporting is similarly different from the NPRM’s proposed Industry Spot & Pull metric, both because CSD is a car-by-car calculation and because CSD is a measure of CSXT’s performance against its local plan and thus excludes misses that are not attributable to CSXT.²¹ To be sure, it is possible for the Board to create standardized metrics relating to Original ETA and local service performance, and

²⁰ *Id.* at 15-16; *id.*, Verified Statement of Michael Cheatham at 8-10.

²¹ CSXT Opening Comments at 20-24; *id.*, Verified Statement of Michael Cheatham at 13-14.

CSXT would be pleased to engage with Board staff in that process. But that is a process that should occur separate and apart from the designation of those metrics as lane-by-lane service performance thresholds that can trigger a reciprocal switch remedy. Right now, there is no basis for the Board to conclude that EP 770 systemwide measures can provide meaningful information for determining “inadequate service” thresholds for newly minted metrics on a lane-by-lane basis.

Third, the new transit time metric has no analogue in an existing Board metric, and the NPRM’s proposal that a 20% transit time increase would constitute inadequate service was not supported by any data analysis. As CSXT explained on opening, this metric raises serious reasons for concern because of the natural variability of the rail network and the relatively low threshold for a 20% increase. The table on page 19 of CSXT’s opening comments showed that a single day’s increase in average transit time would exceed the 20% threshold for any shipment of 5 days or less.²² For a short-haul move of one day, just 5 hours would be enough to exceed the threshold.²³

CSXT’s initial concerns about the transit time metric have proven to be well-placed. While it was not possible to conduct a full assessment in the time allotted for opening comments, the analysis presented by AAR in its reply demonstrates that the transit time metric is not well-calibrated to identify actual service problems. AAR’s analysis shows that nearly every lane on the rail network will

²² CSXT Opening Comments at 19.

²³ *Id.*

experience transit time fluctuations from time to time, even when the network is performing well. For example, the Board has acknowledged that rail service in 2023 (while not fully recovered) was generally improved from the service challenges of 2022.²⁴ But even in that improving environment, there is a 65.5% chance that a given carload in 2023 traveled in a lane that experienced a year-over-year transit time increase of more than 20% over 2022 at some point during the year.²⁵ (Of course, nearly as many 2023 carloads traveled in lanes that experienced a similar transit time decrease at some point during the year.²⁶) Nearly 90% of carloads traveled in lanes that experienced either an increase or a decrease in transit time over 20%.²⁷ What this analysis demonstrates is that transit time fluctuations are a reality of real-world railroading, and a metric that would tag such fluctuations as automatic “service failures” is not reasonably calibrated to identify actual service problems.²⁸

²⁴ Cf. NPRM at 5 (“The Board recognizes that, over the past several months, Class I carriers have taken steps that are intended to improve service and that, in some cases, service has improved.”).

²⁵ See AAR Transit Time Analysis at 7.

²⁶ *Id.* 62.3% of carloads were in such lanes.

²⁷ *Id.*

²⁸ While AAR’s evidence makes clear that the transit time metric cannot be a single reliable indicator of service inadequacy, CSXT would not object to some form of a transit time metric being evidence that a shipper might rely on in conjunction with other evidence. Similarly, while CSXT concurs with AAR’s suggestion that a decline in ISP could never alone constitute logical grounds for a forced switch (because a forced switch would not change which carrier was providing local service), CSXT believes that a standardized local service metric like ISP could be useful to the Board, and could be considered in a forced switching proceeding in conjunction with other evidence of service quality.

Fourth, and perhaps most importantly, even if the Board were using established service metrics (rather than newly minted ones) and even if it had experience with those metrics on a lane-by-lane basis, no single service metric can ever constitute conclusive evidence of service quality. While service metrics are valuable tools, metrics can dip for many reasons, as Casey Albright explained in his Opening Verified Statement and explains further in his Reply Verified Statement.

On opening Mr. Albright explained that service metrics might decrease for reasons that do not indicate a service problem, such as capital investment projects or maintenance curfews that could cause short-term reroutings or slowdowns in the interest of long-term network health and expansion.²⁹ He also explained how demand fluctuations such as volume spikes during grain harvest season or plant idlings during strikes could change traffic patterns in a way that impacts metrics for both the affected shipper and other customers.³⁰ His Reply Verified Statement identifies other scenarios where metrics could decline without the incumbent carrier being at fault, such as where a connecting carrier causes interchange delays or where a customer's actions or inactions result in delays.³¹

In short, the Board can look to metrics as valuable evidence, but it needs to be open to consider reasonable explanations for metric dips. Mr. Albright's Reply Verified Statement suggests ways that the Board could expand its list of defenses to

²⁹ CSXT Opening Comments, Verified Statement of Casey Albright at 7-8.

³⁰ *Id.* at 6, 9, Appendix.

³¹ Reply Verified Statement of Casey Albright at 4-9.

account for common scenarios where a railroad's service metrics might decline without any railroad fault. Potential regulatory language for the Board's consideration is provided below in Section V.

III. THE FINAL RULE SHOULD ALLOW CONSIDERATION OF ALL PUBLIC INTEREST IMPLICATIONS.

CSXT's opening comments argued that the Board's public interest determination should consider the interests of other parties and the network as a whole.³² The pre-Staggers standards for considering the joint use of terminal facilities, which were imported by Congress when it adopted § 11102(c), made clear that determining whether forced access is in the public interest requires consideration of the impact of the requested relief on other parties—not just the petitioner.³³

Several opening comments show the kinds of interests that the Board should keep in mind when determining whether a forced switch is in the public interest. For example, several labor organizations express concerns about the potential impacts of the proposed rule on rail employees and collective bargaining agreements, and concern that the proposed rule might create more problems than it solves.³⁴ The Board should give due consideration to the comments and concerns of

³² CSXT Opening Comments at 45-49.

³³ *Mfrs. Ass'n of York*, 73 I.C.C. at 49; *Jamestown*, 195 I.C.C. at 292 (same).

³⁴ See, e.g., Comments of the Brotherhood of Locomotive Engineers and Trainmen, *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2) (filed Nov. 7, 2023); Opening Comments of the Transportation Trades Department, AFL-

railroad employees, both in considering a final rule and in any individual proceeding brought under the final rule.

In the same vein, the comments of the Commuter Rail Coalition shows the need to consider potential impacts on passenger service of a potential forced switching order. CSXT supports CRC's suggestion that the Board require that an affected passenger railroad be notified of any forced switching petition and that it be given an opportunity to comment.³⁵ CSXT also supports the proposal of the American Short Line and Regional Railroad Association ("ASLRRA") that short line railroads be notified of petitions for reciprocal switching that could affect joint line traffic handled by that short line. As ASLRRA notes, "an additional switch could result in a delay further down the line," and affected connecting carriers should be notified of forced switching petitions and given the opportunity to comment if they wish.³⁶

To be sure, not every forced switching petition would impact passenger service or connecting short lines or have a meaningful impact on rail employees. The Board should not expect that every petition would require a complex, multi-party process. But the Board needs to be open to allowing participation from

CIO, *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2) (filed Nov. 7, 2023).

³⁵ Comments of the Commuter Rail Coalition, *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2), at 6 (filed Nov. 7, 2023).

³⁶ Comments of the American Short Line and Regional Railroad Association, *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2), at 7 (filed Nov. 7, 2023).

affected parties and to considering issues that could affect the public interest. A flexible process like the one proposed by CSXT is well-tailored to considering third party views when they are relevant to the relief being requested.

IV. STANDARDIZED METRICS WILL TAKE TIME TO DEVELOP AND IMPLEMENT.

CSXT believes that standardized service performance metrics measuring transit, on-time arrival, and local service would be useful tools for the Board to monitor the rail network. CSXT also believes that such metrics potentially could be useful evidence in individual cases. But as CSXT explained in its opening comments, creating standardized industry-wide service performance metrics requires significantly more engagement with stakeholders and work to refine details and avoid unintended consequences.³⁷ The Board may want to consider technical meetings or conferences like those it held in Ex Parte 724 (Sub-No. 4) so that it can create standardized metrics that are transparent and fair.

Once the Board completes its work of finalizing standardized metrics, railroads like CSXT will have to complete a significant amount of technical and programming work to implement those metrics. This is particularly true if customers are entitled to obtain metrics for any 12-week time period (as the NPRM suggests) and if the final rule allows customers who have not filed petitions to obtain metric data on demand.³⁸ An automatic process would need to be built to

³⁷ CSXT Opening Comments at 6.

³⁸ As CSXT explained in opening comments, the NPRM's proposal that railroads provide pre-complaint discovery of metrics to any customer on demand would

enable CSXT to respond to potential customer requests for metrics on a timely basis.

The attached Verified Statement of John Maio explains that designing and implementing such a platform could take a year. This timeline assumes that CSXT would hire outside consultants to build the platform; using outside consultants would allow CSXT to bring the new platform online faster than if CSXT used in-house IT staff.

CSXT raises this point not as an objection to the Board's project of standardizing metrics, which CSXT supports. Rather, CSXT believes that the Board should be aware of the likely realistic timeline for creating a new regulatory regime in which bespoke lane-by-lane performance metrics would need to be produced on demand for any of CSXT's more than 5,000 customers and 60,000 lanes in a matter of days. The Board should consider the time for implementation when it adopts any final rule. And that is all the more reason for the Board to proceed to adopt a flexible process for § 11102(c) petitions while it finalizes standardized performance metrics.

V. CSXT'S RECOMMENDATIONS CAN BE OPERATIONALIZED IN CLEAR REGULATORY LANGUAGE.

In this final section, CSXT proposes potential regulatory language that would give effect to its recommendations. While there are other potential ways in which

significantly depart from Board precedent and ordinary legal process, and is not consistent with the Board's statutory authority. The Board instead should adopt a more typical process in which petitioners would be entitled to obtain metrics or other evidence through discovery or initial disclosures. *See id.* at 38-41.

the Board could adopt CSXT's recommendations, this language is provided as a suggestion that may assist the Board as it develops a final rule.

§ 1145.1 Definitions.

CSXT does not have detailed suggestions on the definitions section, but notes that several definitions may need to change to reflect any final standardized performance metrics that the Board develops.

§ 1145.2 Performance Standards.

As noted above and in CSXT's opening comments, the Board should consider bifurcating the complex task of creating standardized performance metrics from the more straightforward task of creating a process for parties to seek § 11102(c) relief for alleged service inadequacies. This section could be reserved to define future performance standards that the Board may wish to develop in a sub-docket or another docket.

§ 1145.3 Defenses.

This section makes clear that the Board will consider any defense that is relevant to whether there is a service inadequacy that creates an actual necessity or compelling reason for a forced switch. It also specifies amendments to the defenses that the NPRM included and particular additional defenses that the Board should consider, consistent with the Opening and Reply Verified Statements of Casey Albright.

§ 1145.3 Defenses.

The Board will consider any defense relevant to whether there is a service inadequacy for which there is actual necessity or compelling reason for a switching agreement, including, but not limited to, the defenses listed in this section. The defenses specified in this section are not exclusive and shall not create a presumption as to the validity of any other defense raised by a rail carrier.

- (a) The rail carrier experiences extraordinary circumstances beyond the carrier's control, including but not limited to operational impacts stemming from natural disasters, severe weather events, flooding, accidents, derailments, and washouts.
- (b) The alleged service inadequacy is due to a significant and unanticipated increase in either the petitioner's traffic or traffic from another customer that impacted service to the petitioner.
- (c) The alleged service inadequacy is due to highly unusual shipment patterns in either the petitioner's traffic or traffic from another customer that impacted service to the petitioner.
- (d) The alleged service inadequacy is due to the actions or inactions caused by the petitioner or third-parties, including the dispatching choices of a third party or another carrier that controls rail facilities on the route.
- (e) The alleged service inadequacy is due to scheduled maintenance or capital improvement projects.
- (f) The alleged service inadequacy is due to a valid embargo.
- (g) The alleged service inadequacy has been resolved.

§ 1145.4 Negotiations.

This section expands the time period for parties to negotiate a dispute and requires negotiations to include the alternate carrier, consistent with AAR's recommendation in opening comments. The parties would be free to share information in negotiations in an attempt to reach a solution, and could voluntarily share metrics that they have calculated or details of defenses.

§ 1145.4 Negotiations.

At least four weeks prior to petitioning for prescription of a reciprocal switching agreement hereunder, the petitioner must seek to engage in good faith negotiations with the incumbent rail carrier and the proposed alternate carrier. The petitioner must notify the incumbent rail carrier and the proposed alternate carrier in writing that the petitioner seeks to commence negotiations. The written notice must contain the name of the shipper or receiver, describe the nature of the alleged service inadequacy, and clearly state that the petitioner is seeking to commence negotiations under this section 1145.4.

§ 1145.5 Procedures.

This section implements CSXT's recommendation that petitioners be allowed to present any evidence that they believe shows inadequate rail service. It also

provides a process for railroads to produce any service performance metrics requested by the petitioner, to the extent that such metrics were not shared during the negotiations process set forth in § 1145.4. Petitioners could file opening evidence up to thirty (30) days after receiving those metrics, although a petitioner could file earlier if it wished for a faster process. As with any Board proceeding, parties could use the Part 1114 discovery rules if desired, but discovery would not be required. CSXT's proposed procedures also provide for the petition to be served on potentially interested parties like passenger and commuter railroads, connecting freight railroads, and labor organizations. The incumbent carrier would be responsible for identifying and serving such parties within five business days of being served with the petition.

§ 1145.5 Procedures.

- (a) If a petitioner believes that a rail carrier providing it service is providing inadequate rail service, the petitioner may file a petition for prescription of a reciprocal switching agreement under this part.
- (b) The petition must include the information and documents described in this paragraph (b).
 - (1) Confirmation that the petitioner attempted good faith negotiations with the incumbent and alternate carrier, and a copy of the written notification, as required by § 1145.4.
 - (2) An explanation of the alleged current service inadequacy, and identification of any performance standard in [reserved § 1145.2] for which it seeks data to support its claim.
 - (3) Current switching publications of the incumbent rail carrier.
 - (4) A commitment from another available carrier to perform the alternate service.
 - (5) A motion for a protective order as set forth at 49 CFR 1104.14(c).
- (c) The petitioner must serve the petition on the incumbent rail carrier, the alternate rail carrier, and the Federal Railroad Administration.
- (d) Within 5 business days of being served with the petition, the incumbent rail carrier shall serve the petition on (i) any passenger or commuter railroads

operating over its lines that could be affected by the requested reciprocal switch; (ii) any labor organizations representing employees whose work could be impacted by the requested reciprocal switch; and (iii) any connecting freight railroads who participate in joint-line movements including the traffic for which the reciprocal switch is requested.

- (e) Within 7 business days of issuance of a protective order by the Board, the incumbent carrier shall provide the petitioner with individual performance records relevant to any performance standard identified in the petition for the three-month period preceding the written notification required by § 1145.4, and shall certify that it has done so to the Board.
- (f) A petitioner must file its opening evidence, which may include the information provided by the incumbent carrier in paragraph (e) or any other evidence supporting its claim of inadequate service, within 30 days of receipt of the information certified in paragraph (e).
- (g) Replies to the petition are due within 20 days of opening evidence. A reply shall be filed by the incumbent rail carrier and by the alternative rail carrier. Other interested parties may file replies.
- (h) The petitioner may file a rebuttal within 20 days after replies to the petition.
- (i) The Board will endeavor to issue a decision on a petition within 90 days from the date of the completed petition.

§ 1145.6 Prescription.

The edits to this section make clear that the Board must make findings required by the statute before prescribing a forced switch, including that there is an actual necessity or compelling reason for the switch and that the forced switch would remedy the alleged service inadequacy. They would also make the default time period for a prescription one year, unless the Board found that a longer or shorter period would be appropriate under the facts of the case.

§ 1145.6 Prescription.

- (a) The Board will prescribe a reciprocal switching agreement under part 1145 if it finds that all the conditions in this paragraph (a) are met.
 - (1) For the lane of traffic that is the subject of the petition, the petitioner is a terminal-area shipper or receiver that has practical physical access to only one Class I carrier that could serve that lane.
 - (2) The incumbent rail carrier is currently providing inadequate rail service to the petitioner that will be remedied by the proposed switching agreement. In

determining whether there is a current service inadequacy, the Board may consider the rail carrier's failure to meet one or more of the performance standards in [reserved § 1145.2] with regards to the petitioner's shipment and all other evidence submitted.

- (3) Actual necessity or compelling reason for the reciprocal switching arrangement exists. In making this determination, the Board will consider the interests of other shippers, carriers, and the general public.
- (4) The switching agreement is safe and practicable and will not unduly impair either rail carrier's operations.
- (b) In prescribing a reciprocal switching agreement, the Board ordinarily shall prescribe a term of service of one year, unless it finds that a longer or shorter term is appropriate in light of the facts of the case.
- (c) Upon the Board's prescription of a reciprocal switching agreement under this part 1145, the affected rail carriers must: set the terms of the agreement and offer service thereunder within 30 days of service of the prescription; and notify the Board within 10 days of when the carriers offered service that the agreement has taken effect.
- (d) If the affected carriers cannot agree on compensation within 30 days of the service of the prescription, then the affected rail carriers must offer service and petition the Board to set compensation.

§ 1145.7 Termination.

The edits to this section would conform the rules for termination of a switching prescription to the statutory compelling need standard. As CSXT detailed in opening comments, a regime in which forced switching prescriptions automatically and indefinitely renew unless a railroad successfully petitions to remove them is inconsistent with Congress's command. Forced switches may only be in place for so long as there is a compelling need for them. CSXT's suggested revision would create a process for petitions to renew forced switching prescriptions, and make clear that petitions to terminate prescriptions can be filed at any time, which is consistent with the current procedures in 49 C.F.R. part 1147. CSXT's proposed regulations also incorporate language reminding carriers not to file such

petitions prematurely. *Cf.* 49 C.F.R. § 1147.1(c)(1). Finally, the revisions make clear that non-use of a switching arrangement would conclusively indicate that there is no actual necessity or compelling reason for that prescription to be renewed in order to remedy a service inadequacy.

§ 1145.7 Termination.

- (a) A prescription hereunder automatically terminates at the end of the term established under § 1145.6(c), unless the Board grants a petition by the petitioner to renew the prescription. The Board will grant a petition for renewal if it finds that all of the elements of § 1145.6(a) are met.
- (b) A petition for renewal may be filed not more than 90 days before the end of the term of the switching prescription. A reply to a petition for renewal is due within 20 days of the petition. A rebuttal may be filed within seven days of the filing of the reply.
- (c) A prescription hereunder may be terminated by the Board prior to its expiration. The Board will grant a petition to terminate a prescription if the incumbent rail carrier demonstrates that the switching agreement is no longer practicable or in the public interest. Non-use of the switching arrangement will result in a finding that there is no actual necessity or compelling reason for the switching arrangement.
- (d) The incumbent rail carrier may submit a petition to terminate a prescription at any time, but carriers are advised not to file such a petition prematurely. A reply to a petition to terminate is due within 15 days of the petition. A rebuttal may be filed within seven days of the filing of the reply.

CONCLUSION

For the reasons above and in CSXT's opening comments, the Board should amend the NPRM to adopt a qualitative approach for assessing service inadequacy, and make the other amendments that CSXT suggests.

Respectfully submitted,

/s/ Matthew J. Warren

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December 20, 2023

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. EP 711 (SUB-NO. 2)

**RECIPROCAL SWITCHING FOR
INADEQUATE SERVICE**

**REPLY VERIFIED STATEMENT OF
CASEY ALBRIGHT**

My name is Casey Albright, and I am Senior Vice President of Network Operations and Service Design for CSX Transportation, Inc. (“CSXT”). I submitted a Verified Statement in support of CSXT’s Opening Comments in this proceeding, which endorsed the Board’s efforts to use service metrics as tools to perform its regulatory functions, but cautioned that no service metric should be treated as the single determining factor for whether service is good or bad. As I noted, there are many circumstances that can cause a particular service metric to decline even where the railroad was providing the best possible service under the circumstances. The Notice of Proposed Rulemaking (“NPRM”) identifies some “affirmative defenses” that the Board would consider as a justification for a metric dip, but those defenses are limited and narrow. In this reply verified statement, I give some suggestions on ways that the Board could improve its list of defenses to cover other justifiable explanations for a particular service metric to decline. Proposed regulatory language that implements these suggestions is included in CSXT’s reply comments.

As CSXT explained in its opening comments, the Board should not use a single metric decline as the single definitive indicator of service quality. Rather, customers who believe that they have received inadequate service should be able to raise any evidence that they believe shows a service problem, whether that evidence is based on a Board-designed metric, on other quantitative service metrics, or qualitative evidence.

If a shipper alleges inadequate service (whether through a service metric or otherwise), the railroad should be able to present evidence to show that its service was not inadequate under the circumstances or otherwise that a forced switching arrangement is not allowed. The list of defenses in the NPRM is a start, but it does not cover many situations in which service metrics could decline without railroad fault. Below I will suggest some changes to the defenses in the NPRM and some additional defenses that the Board should consider.

I. Modifications to the NPRM's proposed defenses

Extraordinary Circumstances. The NPRM's first defense would excuse a metric decline if natural disasters, severe weather, or derailments create "extraordinary circumstances," which the rule defines as "the type of events that permit a railroad to qualify for an emergency trackage rights exception."¹ I understand that such an emergency trackage rights exception is only available for an "unforeseen track outage."² While the Board is right to recognize that extreme

¹ NPRM at 25.

² 49 C.F.R. § 1180.2(d)(9).

events of this type can have short-term impacts on service quality, it does not take a track outage for service to be affected by extreme weather. For example, extreme weather or flooding can lead to slow orders that can temporarily affect service. The Board should amend this defense to cover all operational impacts that reasonably stem from extraordinary circumstances.

Surprise Surges and Unusual Shipment Patterns. The NPRM's second and third defenses would excuse metric declines that were caused by a surprise surge in the petitioner's traffic or highly unusual shipment patterns by the petitioner. The Board is right to recognize that customer behavior and changing shipment patterns can have an impact on service metrics. But the proposed defenses are limited to unexpected changes in the petitioner's traffic—not other traffic. In many situations, changing traffic patterns for one customer or a group of customers can have an impact on service metrics for other customers. For example, if one of the multiple customers served by a local train has a surge in demand, that could temporarily impact service to other customers serviced by that local train while the railroad adjusts. Or if a customer has a backlog of cars that take up capacity at its site or at a local serving yard, that congestion can affect the amount of service the railroad can provide to other customers. Or an unexpected change in grain traffic flows could impact scheduled carload trains in a way that temporarily affects metrics. As I explained in my previous verified statement, the grain harvest is one of the many dynamic features of the rail network, with traffic flows changing year over year based on harvest and weather. Sometimes changes can happen quickly, as occurred

this year when we had prepositioned assets in particular locations in the Midwest in advance of expected customer needs, only for those customer needs to change on short notice, requiring us to redeploy assets to other parts of our network. This is an example of the sort of traffic pattern change for one set of customers that could result in downstream, short-term service metric impacts for other customers.

Recent strikes at some automakers are another example of an unexpected demand shift for some customers that could affect metrics for other customers.

As I explained in my opening verified statement, traffic pattern changes like these can have “ripple effects” that impact customers on our network, but which are not caused by any CSXT service inadequacy. The Board should be open to consider evidence that an unexpected change in another customer’s traffic patterns was the cause of a customer’s temporary metric dip.

Third party dispatching. Lastly, the NPRM indicated that the Board would consider evidence that “third-party dispatching” affected the railroad’s performance. This proposed defense would recognize that railroads are not entirely in control of the movement of traffic over the interconnected rail network. For example, multiple key routes on CSXT’s network are dispatched by third parties. Sometimes jointly owned lines are dispatched by another Class I; for example, Norfolk Southern (“NS”) controls dispatching on the jointly-owned Monangahela coal lines. In other situations a terminal or switching railroad may control dispatching. For example, the Indiana Harbor Belt controls dispatching on its lines in the Chicago area. And in still other situations a passenger or commuter railroad or state agency may

control dispatching, as occurs in Central Florida on lines that are owned and dispatched by the State of Florida for SunRail commuter service, but over which CSXT still operates.

In the final rule, the Board should recognize that dispatching is not the only situation in which a third party railroad's decisions can directly impact a railroad's operations. For example, in some locations a third party controls a diamond or interlocking on CSXT's lines. For example, Union Pacific controls the interlocking at Thornton Junction on CSXT's Elsdon line through Chicago. And NS controls a key CSX/NS diamond in Jacksonville. While CSXT works closely with other railroads to coordinate operations, the final rule should recognize the many scenarios in which one railroad's performance can be impacted by another railroad, whether because that other railroad controls dispatching or because it controls joint facilities like diamonds or interlockings.

II. Additional Defenses that Should be Considered

The four defenses provided in the NPRM are not broad enough to cover all the scenarios in which a metric might decrease without a service failure. As I explained in my opening verified statement, service metric fluctuations can be caused by capital improvements, necessary maintenance, or customer demand spikes (which I discussed above). Other causes for service metric fluctuations could be customer behavior or interchange issues with other railroads. The Board should ensure both that its defenses cover these scenarios and that it retains the flexibility

to consider other explanations for service metric fluctuations that might not be specifically spelled out in the rule.

Capital improvements and maintenance. Capital improvement projects such as double-tracking or siding expansions can cause short-term disruptions in the interest of long-term network improvement—just like a project to add a lane to a highway may increase short-term congestion in the interest of long-term improvements. In the same vein, a maintenance megablock or curfew in which CSXT concentrates maintenance on a particular section of track for 10-12 hour segments a day may require some rerouting and rescheduling that could impact short-term metrics in the interest of creating a safer and more reliable network over the long term.

For example, the Howard Street Tunnel project will have major infrastructure benefits for CSXT, the City of Baltimore, and the U.S. rail network as a whole. Enlarging the tunnel to double-stack intermodal capacity will mark a key enhancement to CSXT's intermodal service and create new opportunities for the Port of Baltimore. There is no doubt that completion of the project will enhance CSXT's ability to provide effective rail service that is competitive with trucks. But during the final phase of construction next year, CSXT expects that at times construction may decrease the normal fluidity of the line. We are talking with our customers about what to expect, and we are designing plans to ensure that we are meeting their needs while construction is ongoing.

The Board should ensure that its final rule encourages infrastructure-enhancing projects like the Howard Street Tunnel project—even if the construction of those long-term infrastructure enhancements might affect short-term service metrics. The Board can do so by making clear in the final rule that it would consider a railroad’s evidence that capital or maintenance projects were a cause for any dip in a service metric.

Connecting carrier causes. One railroad’s metrics also can be affected because of problems on an interchange partner. For example, if one of CSXT’s interchange partner was unable to take cars because of congestion on its network or crew shortages, that failure by the interchange partner could cause cars to pile up in CSXT’s yard and have a lasting ripple effect on CSXT’s service. In some cases, one of CSXT’s short-line partners might not have a seven-day-per-week operation like CSXT, and thus interchange cars might pile up over each weekend. CSXT works to coordinate with all its interchange partners and to align operations as much as possible, but sometimes another railroad’s failure to be ready to interchange cars can lead to bunching that could affect a CSXT service metric, particularly those relating to on-time performance.

Moreover, CSXT might offer cars for interchange that the other carrier is not prepared to accept, and the other carrier might reject CSXT’s offer until it is ready to accept the cars. While in this situation CSXT’s trip would have ended, actual interchange would not yet have occurred, and the connecting carrier’s system would likely not have begun its trip. It is not clear how the current NPRM would address

this situation, but it is clear that a railroad should not be penalized for an alleged service failure for interchange traffic that was actually attributable to the interchange partner.

As the Verified Statement of Michael Cheatham attached to CSXT's Opening Comments explained, service metric calculations for interchange traffic raise significant complexities, and the Board should consider technical conferences to explore how best to create a consistent metric for interchange traffic prior to finalizing a rule.

Customer issues. Good service requires a partnership between railroads and their customers, and CSXT supports the Board's efforts to ensure that railroads hold up their end of the bargain. But the Board should be open to considering evidence that a customer's actions or inactions may contribute to alleged railroad service problems. For example, if a customer finds itself unable to load or unload on its usual schedule due to customer crew shortages or equipment issues (such as a malfunctioning coal dumper), those customer issues can cause backups that can impact metrics for service to that customer or other customers. Customers might also release cars that cannot be pulled, whether because the car has not been unloaded or because the customer's track is inaccessible. Situations like these would be treated as customer exceptions for CSD purposes and backed out of those calculations,³ but they could affect a metric like transit time if the customer's

³ As explained in more detail in the Verified Statement of Michael Cheatham attached to CSXT's Opening Comments, Customer Switch Data or CSD is a

incorrect indication that the car was ready to pull was used to start the clock for transit time.

Embargoes. If an alleged metric failure was caused by a valid, lawful embargo, the railroad should be permitted to point to that embargo as a reason for the metric dip. The petitioner should be free to argue that the embargo in question was invalid or unlawful, but a railroad should at least be able to submit evidence that an embargo affected the allegedly deficient performance.

Cure. If a railroad has corrected the alleged service inadequacy, the Board should not impose forced switching. As I explained in my opening verified statement, at CSXT we use service metrics as a tool to identify and respond to issues. If a railroad has quickly and adequately responded to a service problem, then it ought to be able to present evidence of that response to show why there is no compelling need for a forced switch.

Other Evidence. Finally, the Board should make clear that it would consider other defenses that tend to show that there is no actual necessity or compelling reason for a forced switch. No list of potential defenses can define all relevant evidence in advance. For example, train delays can sometimes correspond to special events that require rerouting, such as major political conventions that may require rerouting of hazmat traffic for extended periods. While such rerouting could be relevant in particular forced switching petitions, the Board does not need to spell

measure of CSXT local service performance that is used by CSXT internally and made available to customers in ShipCSX.

out every conceivable defense in the final rule. If the Board instead makes clear that it will consider defenses that are relevant to the statutory standard of compelling need, it would provide sufficient guidance as to what defenses are permissible while ensuring that it could consider whatever evidence might be relevant in particular cases.

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VERIFICATION

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge, belief, and information. Further, I certify that I am qualified and authorized to file this statement.

Executed this 20th day of December, 2023.

/s/ Casey Albright

Casey Albright

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. EP 711 (SUB-NO. 2)

**RECIPROCAL SWITCHING FOR
INADEQUATE SERVICE**

**REPLY VERIFIED STATEMENT OF
JOHN MAIO**

My name is John Maio, and I am head of Data & Analytics for CSX Transportation, Inc. (“CSXT”). I have been in my current position for over a year, and I have nearly 40 years of experience in the data and analytics space across multiple industries, including nuclear, electrical transmission and distribution, oil and gas, and railroading. I have been involved in major software development and implementation programs throughout my career. I also spent considerable time with a major technology company focused on large U.S. utilities, where I provided guidance across multiple major programs leveraging several different technologies and vendors. All of this experience allows me to be qualified and certified to deliver complex major programs.

I am submitting this Verified Statement to summarize the time that will be required at CSXT to build software tools to provide customers with the lane-by-lane service performance metrics that the Surface Transportation Board (“Board”) has proposed in this proceeding. CSXT already provides many service performance metrics to customers through ShipCSX, and it supports the Board’s efforts to

develop standardized metrics. However, the Board should know that it takes time to develop an effective system to roll out new performance metrics to customers, and the final rule should give railroads sufficient time to implement any new service performance metrics that are adopted.

I understand that CSXT and some other parties have submitted comments in this proceeding suggesting changes to the service performance metrics that were proposed by the Board in its September 7, 2023 Notice of Proposed Rulemaking (“NPRM”) and that any final rule that the Board adopts in this proceeding may adopt versions of the proposed metrics. I also understand that the NPRM would require railroads to produce lane-specific service performance metrics to any customer within seven days.¹

The best way for CSXT to provide lane-specific service performance metrics to customers on short notice is to build a module in ShipCSX that would allow customers to acquire this information upon request. Building new functionality like this takes time and coordination among different teams. Data teams would be responsible for identifying data sources, validating metric calculations, and creating a continuous delivery mechanism to allow customers to receive updated data in real

¹ CSXT argued in opening comments that the Board should abandon its proposal to require railroads to produce lane-specific service performance metrics to any shipper on demand, and instead only require metrics to be produced to shippers who file a petition for relief. While CSXT hopes that the Board will adopt CSXT’s suggestion, we have prepared the analysis in this verified statement in the event that the Board does proceed to adopt a rule in which any shipper is able to demand lane-by-lane service performance metrics calculated over the shipper’s selected time period.

time. Other teams responsible for product management and digital experience would need to design and build the customer interface. Further complications are created by the fact that the NPRM would allow customers to select any 12-week period for their metric analysis (and not the most recent 12 weeks or some other more defined period.) It thus would be necessary to design a platform on which a customer can submit a request that allows them to apply filters to obtain a tailored view of particular time frames on particular lanes.

CSXT has had several internal discussions in anticipation of a potential final rule, and has developed a preliminary project timeline for establishing an effective ShipCSX interface for on-demand access to the Board's proposed service performance metrics. This timeline is provided for illustrative purposes only, and it is based on several assumptions that may not accord with the final rule. For example, the illustrative project timeline below assumes that an STB rule would be finalized in late 2024 (after stakeholder engagement and technical conferences on the methodology for the metrics), such that CSXT would be able to begin the project in earnest beginning in January 2025. The actual timeline would depend on the actual date that a final rule is issued. And the project timeline assumes that the final rule contains three metrics for carload traffic that generally accord with the NPRM proposal. If the Board were to adopt different metrics or attempt to apply metrics to unit train traffic, then this illustrative project timeline could be affected.

TABLE 1: PRELIMINARY POTENTIAL PROJECT TIMELINE

TASK	ASSIGNED TO	START	END
Initiation			
Transform data to Azure Cloud	Data Ops	1/9/25	1/23/25
Apply Data policies and security	Data Ops	1/23/25	2/20/25
Establish the data foundation for the reciprocal switch STB report by developing three metrics	Data Products	1/23/25	2/20/25
Create confirmation workflow for final data exchange submission	Data Ops	2/20/25	4/17/25
Design and Implementation			
Create and validate process for receiving customer requests	Data Ops	4/18/25	5/2/25
Test and validate three metrics before promoting to production	Data Prodcuts	4/18/25	5/16/25
Promote three metrics to production and provide 90 days of warranty support	Data Products	5/16/25	7/15/25
Create confirmation workflow for final data exchange submission	Data Ops	6/20/25	7/18/25
Ingesting identified data for the reciprocal switching STB requirements and staging the data for further analysis.	Data Science	2/21/25	4/22/25
Performing data analytics using ordinary skill of the art techniques to provide quality, predictive and orchestration requirements for reporting.	Data Science	4/23/25	5/3/25
Interactive dashboard to allow the customer to retrieve their data for the STB identified analysis.	Data Science	5/4/25	5/25/25
Provide a continuous delivery mechanism to allow for updates / modification to the various components required for reporting.	Data Science	5/26/25	6/23/25
Customer data request workflow process - Customer User Interface Frontend/Backend	Customer User Interface	4/18/25	7/27/25
Customer user interface frontend/backend	Customer User Interface	7/28/25	9/26/25
Customer data request workflow process: UX	Digital Experience	4/19/25	5/19/25
Design of customer user interface views	Digital Experience	5/20/25	6/19/25
Execution			
Testing and validation	All Teams	9/27/25	10/25/25
Evaluation			
Evaluate progress and address risks	All Teams	11/8/25	1/7/26

Table 1 shows that the timeline for developing an effective ShipCSX interface could be as long as 12 months. That timeline assumes that CSXT would engage outside consultants in the interest of expediting completion. CSXT preliminarily estimates that the costs of those vendors could be as much as \$2.7 million.

Both the time required and the vendor costs are highly dependent on the contours of the final rule. For example, if the Board chose to limit the time period for service performance metric reporting to the time period immediately before a complaint, that would reduce the data complexity and some of the interface complexity. But implementing any form of final standardized service performance metrics that are different from what CSXT uses today will inevitably require some time and cost. The Board therefore should ensure that its final rule in this proceeding allows reasonable time for implementation.

VERIFICATION

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge, belief, and information. Further, I certify that I am qualified and authorized to file this statement.

Executed this 20th day of December, 2023.

/s/ John Maio

John Maio