



SIDLEY AUSTIN LLP  
1501 K STREET, N.W.  
WASHINGTON, D.C. 20005  
+1 202 736 8000  
+1 202 736 8711 FAX

AMERICA • ASIA PACIFIC • EUROPE

RATKINS@SIDLEY.COM  
+1 202 736 8889

245322

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**By Electronic Filing**

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

Re: Consumers Energy Company v. CSX Transportation, Inc., STB Docket  
No. NOR 42142

Dear Ms. Brown:

Consumers Energy Company (“Consumers”) alleged in its March 12, 2018 Reply to CSX Transportation, Inc.’s (“CSXT’s”) Petition for Reconsideration that CSXT’s Petition for Reconsideration “clearly violates” the Board’s rules by including two verified statements as exhibits to the Petition.<sup>1</sup> Consumers’s accusation has no merit, and CSXT respectfully requests leave to submit this short letter clarifying the record on this single point.<sup>2</sup>

The 20-page limit that 49 C.F.R. § 1115.3(d) prescribes for petitions for reconsideration applies to “[t]he petition and any reply.” No language in the regulation suggests that the page limitation encompasses exhibits. This omission is telling, because the Board’s regulations specify when it intends for page limits to

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<sup>1</sup> Consumers Reply to CSXT Pet. for Recon. at 3 n.8 (filed Mar. 12, 2018).

<sup>2</sup> In accordance with the Board’s rules precluding replies to replies, CSXT is not responding to any of the other arguments made in Consumers’s Reply to CSXT’s Petition (despite CSXT’s serious disagreements with most of those arguments). But CSXT takes any accusation that it has violated the Board’s rules seriously, and it therefore asks the Board to accept this brief reply to that accusation.

include exhibits.<sup>3</sup> Moreover, it is common practice for parties to submit exhibits to support petitions for reconsideration, even when those exhibits are in excess of 20 pages.<sup>4</sup> In recent cases the Board accepted petitions for reconsideration featuring as many as ten exhibits<sup>5</sup> and petitions with exhibits totaling up to 225 pages.<sup>6</sup> It is also common for parties to submit verified statements as exhibits to support claims in the text.<sup>7</sup> In none of these cases did the Board suggest that the submission of exhibits or verified statements violated the letter or spirit of § 1115.3(d).

Indeed, the two verified statements about which Consumers complains were explicitly submitted as “new evidence” within the meaning of § 1115.3(b)(1). *See* CSXT Pet. for Recon. at 11, 20 n.26. There is nothing improper about a petitioner presenting the “new evidence” that it wishes the Board to consider in verified statements, which are the typical format for the Board to receive evidence.

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<sup>3</sup> *See* 49 C.F.R. § 1111.9(b)(2) (providing that page limitation for final briefs in SAC cases is “inclusive of exhibits”).

<sup>4</sup> *See, e.g.,* Western Coal Traffic League Pet. for Recon., *Petition of the W. Coal Traffic League to Institute a Rulemaking Proceeding to Abolish the Use of the Multi-Stage Discounted Cash Flow Model in Determining the R.R. Industry’s Cost of Equity Capital*, STB Ex Parte No. 664 (Sub-No. 2) (filed Nov. 21, 2016); Pet. for Recon. of Interested Parties, *Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub-No. 1) (filed Oct. 12, 2007).

<sup>5</sup> Pet. for Recon. of E.I. du Pont de Nemours & Co., *E.I. du Pont de Nemours & Co. v. Norfolk S. Ry. Co.*, STB Docket No. 42125 (filed Nov. 12, 2014) (attaching ten exhibits); Pet. for Recon. of Sunbelt Chlor Alkali P’ship, *Sunbelt Chlor Alkali P’ship v. Norfolk S. Ry. Co.*, STB Docket No. 42130 (filed July 30, 2014) (attaching five exhibits).

<sup>6</sup> Pet. of the Sierra Club for Recon., *CSX Transp., Inc.—Pet. for Declaratory Order*, STB Fin. Docket No. 34662 (filed Apr. 4, 2005) (Sierra Club Pet. for Recon.) (exhibits totaling 225 pages); CSX Transportation, Inc.’s Pet. for Recon., *Total Petrochemicals & Ref. USA, LLC v. CSX Transp., Inc.*, STB Docket No. 42121 (filed June 20, 2013) (“CSXT 2013 Pet. For Recon.”) (exhibits totaling 124 pages).

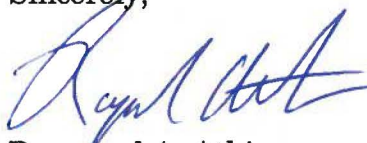
<sup>7</sup> *See, e.g.,* CSXT 2013 Pet. for Recon. (attaching two verified statements); Sierra Club Pet. for Recon. (including multiple declarations as exhibits).

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For all these reasons, Consumers's allegation that CSXT "clearly violated the Board's rules" is wrong and should be rejected.

Sincerely,

A handwritten signature in blue ink, appearing to read "Raymond A. Atkins", written in a cursive style.

Raymond A. Atkins

# **CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of March, 2018, I caused a copy of the foregoing  
Letter to be served by first class mail or more expeditious method upon:

Kelvin J. Dowd  
Slover & Loftus LLP  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036



Alec Weingart