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ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

E.I. DUPONT DE NEMOURS AND COMPANY)

Complainant,)

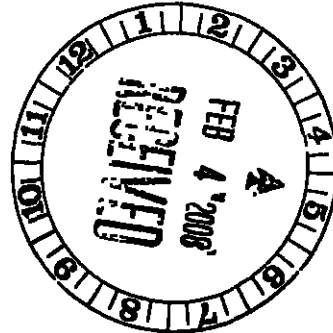
v)

CSX TRANSPORTATION, INC.)

Defendant.)

PUBLIC VERSION

Docket No. NOR 42100



OPENING EVIDENCE OF CSX TRANSPORTATION, INC.

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Dated: February 4, 2008

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I. Introduction, Summary, and Argument

Defendant CSX Transportation, Inc. ("CSXT") hereby submits its Opening Evidence and Argument in Docket No. NOR 42100. The Complaint filed by E.I. DuPont De Nemours and Company ("DuPont") in this Docket is one of three filed against CSXT simultaneously by DuPont on August 21, 2007, under the now-superseded "Simplified Guidelines" that were established in STB Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines – Non-Coal Proceedings*, 1 STB 1004 (1996). In a decision served on September 7, 2007, the Board held that DuPont's cases would be considered under the new standards adopted in *Simplified Standards for Rail Rate Cases*, STB Ex Parte No. 646 (Sub-No. 1) ("*Simplified Standards*") (Sept. 5, 2007).¹

¹ CSXT has filed a Petition for Review of the Board's Decision in *Simplified Standards* with the United States Court of Appeals for the District of Columbia Circuit, *CSX Transportation, Inc. v.*

DuPont filed an Amended Complaint challenging the rates under the Three Benchmark approach of the *Simplified Standards*, on October 30, 2007 (the "Amended Complaint").

A. Introduction and Background

This case – and its two companions in STB Docket Nos NOR 42099 and 42101 – should not be before the Board for consideration under the Three Benchmark procedures established for small cases. Although it could not be determined from DuPont's Complaint, the fact is that DuPont is one of CSXT's largest customers, shipping thousands of carloads of a variety of commodities in literally hundreds of "traffic lanes" (*i.e.*, Origin-Destination, or "O-D" pairs), generating annual freight revenues of approximately \$50 million. Moreover, DuPont has for many years (beginning in the 1980s) moved its traffic on CSX1 under an omnibus, privately negotiated transportation contract (the "Master Contract") which covered the several hundred lanes over which DuPont traffic moves on the CSXT network. Over the years, DuPont and CSXT renegotiated the terms of that Master Contract several times as renewals came due, and amended it as new facilities or movements were added to the arrangement. The Master Contract was a complex document that covered not only hundreds of movements, but also a variety of other terms and conditions, ranging from rates to equipment supply, escalation provisions, payment terms, weighing of cars, credit arrangements, demurrage and ancillary services, and a number of other items. Moreover, given the scope of DuPont's operations and the complexity of dealings under the Master Contract, DuPont insisted on administering it, including initiating

STB, 07-1369, and that appeal remains pending. CSXT reserves its right to contest the Decision in *Simplified Standards* both in general and as the Board applies that Decision in this Docket. CSX1's defense of this Complaint is not intended to, and should not be construed as, a waiver of any arguments on appeal concerning *Simplified Standards* or their application.

amendments and periodic updates of its terms and conditions.² In short, DuPont – a worldwide company with more than \$27 billion in annual revenues and 60,000 employees³ – is an extremely sophisticated and valued customer of CSXT. The traffic covered by this Complaint and its two companions are simply small component parts of a far larger dispute between the parties regarding hundreds of lanes of traffic long governed by a complex, integrated Master Contract.

In 2007, when the parties were unable to reach agreement on a renewal of their omnibus Master Contract, CSXT provided commercially reasonable rates for traffic that had moved under the “Master Contract”. Although CSXT is constrained by confidentiality restrictions from detailing the specifics of the failed negotiations, the Board should be aware that there is much more to these Complaints than meets the eye. Far from constituting a “small rate dispute,” *Simplified Standards* at 22, this case and its two companions appear to be part of a DuPont strategy to invoke the Board’s procedures in an effort to leverage a more favorable resolution of its much larger dispute with CSXT, which includes a large number of lanes and rates, as well as other matters.⁴ As the Board reiterated in a decision issued in this case less than two weeks ago, its Three Benchmark rules and procedures are intended for small cases, and will be enforced “to protect the integrity of [the Board]’s processes from abuse by preventing any improper attempts to disaggregate a large claim into a number of smaller claims.” *E I DuPont de Nemours & Co v CSX Transp., Inc*, STB Docket Nos. 42099 *et al*, Decision at 4 (Jan. 22, 2008) (hereafter decisions in these cases will be cited by docket number and date). Although CSXT does not seek

² This degree of customer control and management is extraordinary. Typically, rail carriers – not their customers – administer their rail transportation contracts.

³ See http://www2.dupont.com/Our_Company/en_US/glance/index.html.

⁴ As CSXT has repeatedly advised DuPont, it remains prepared to negotiate in good faith in pursuit of a new contract between the parties that would cover the Complaint traffic, should DuPont be interested in doing so.

to prevent these cases from going forward – despite the fact that they hardly constitute a “truly small case” for a “small shipper” – CSXT believes it is important that the Board understand the context in which they have arisen.⁵

How and why DuPont selected for challenge the movements in the instant Complaint, as well as the Plastics/Plasticizers and Nitrobenzene movements in Docket Nos. 42099 and 42101, out of the dozens of commodities moving in hundreds of traffic lanes in which CSXT transports DuPont’s traffic, is nowhere explained in the Complaints. But CSXT is concerned, and trusts that the Board shares its concern, that these cases not form the basis for DuPont – or any other shipper – being allowed to “cherry pick” rates in a few specific traffic lanes in order to leverage down rates on all of its traffic. Nor should the Board allow this to be just the “first wave” of a series of complaints disaggregating the parties’ larger dispute regarding their overall commercial relationship and hundreds of lanes of traffic. Certainly any attempt by DuPont to pursue additional Three Benchmark cases within the next five years should be closely and skeptically scrutinized by the Board. In order to proceed, any such subsequent cases should require a compelling explanation why the rates for DuPont’s traffic should not be handled under SAC or SSAC procedures.

⁵ To be clear: none of DuPont’s traffic moving via CSXT-direct routing today moves under the Master Contract or any other longer term contract. Instead, all of that traffic moves under either common carrier rates, or CSXT’s Private Price Quotes (“PPQs” or “PPLs”), both of which were established when the parties’ longstanding omnibus contract expired. Other railroads continue to have omnibus contracts with DuPont and CSXT’s interline traffic with those carriers remains subject to those contracts. CSXT notes that the parties may disagree as to whether some or all of the PPQs covering DuPont’s non-issue traffic are contracts or common carrier rates. Although the Board decided earlier in this case that, based on all of the surrounding evidence and circumstances, the specific PPQs covering the issue movements were common carrier rates (at least with respect to the issue movements), that decision is confined to its narrow specific facts and context, and the Board has made no general determination that CSXT’s PPQs are not contracts. See STB Docket No. 42099 *et al.*, Decision at 5-6 & n.3 (Dec. 20, 2007); *Interpretation of the Term “Contract” in 49 U.S.C. 10709*, STB Ex Parte No. 669 (pending rulemaking proceeding).

B. Summary of Argument

The instant Complaint purports to challenge the rates for three separate movements of the TIH hazmat Chlorine (STCC 2812815) between Niagara Falls, New York on the one hand, and New Johnsonville, Tennessee, and Carneys Point, New Jersey on the other; as well as between Natrium, West Virginia, and New Johnsonville, Tennessee. CSXT submits that such a bundling of movements in a single Complaint should not be permitted and is not what the Board intended when it adopted the “Three-Benchmark” methodology. The Board’s January 22, 2008 decision in these proceedings appropriately affirmed that the total amount of relief potentially available to DuPont is limited to \$1 million over a 5-year period, and that ceiling may impose some limit on the number of movements that complainants seek to bundle. *See* STB Docket No. 42099 *et al.*, Decision at 3-4 (Jan. 22, 2008). CSXT believes that it is fundamentally inappropriate for it to have to defend the rates on three separate movements in this single Complaint, and that DuPont has stepped outside the bounds of the purposes behind the Three Benchmark methodology by filing three Complaints covering a total of seven different sets of movements, all of which are simply disaggregated component parts of a larger dispute. However, because it is mindful of the Board’s repeated urgings that these cases be handled expeditiously, CSXT is tendering its Opening Evidence and Argument with respect to all three movements in DuPont’s Amended Complaint rather than asking the Board to dismiss this Complaint outright.

1. Chlorine

Chlorine (STCC 2812815) is a highly dangerous chemical that is classified as a Poison Gas (Hazard Class 2.3) in the DOT Hazardous Materials regulations. 49 C F R. § 172.101. It is poisonous by inhalation, and is sometimes referred to as a “Poison Inhalation Hazard” (“PIH”) or as a “Toxic Inhalation Hazard” (“TIH”). It is a diatomic chemical gas that is pressurized and

cooled to change it into liquid form for shipping and storage. If liquid chlorine escapes or is released into the air, it quickly changes back to a gas, which is heavier than air and therefore stays close to the ground, spreading from the point of release. Although chlorine itself is not flammable, it is a very strong oxidizer and can react explosively with flammable materials. Chlorine has numerous industrial applications – for example, as a bleach in the manufacture of paper and cloth, and in the manufacture of pesticides, rubber, and solvents. Chlorine is used in the sanitation process for industrial waste and sewage, as well as for killing bacteria in drinking water and swimming pool water. *See generally*, Dep't of Health & Human Servs., Ctrs. for Disease Control & Prevention, *Chemical Emergencies – Facts About Chlorine* (Mar. 18, 2003), available at <http://www.bt.cdc.gov/agent/chlorine/basics/facts.asp>. Sodium Hypochlorite (NaOCl), a non-gaseous bleach product that contains the Chlorine atom but is far safer to transport, can also be used for these public health purposes.

In selecting its proposed set of comparable traffic movements for chlorine, CSXT has fully considered the transportation characteristics suggested by the Board in its *Simplified Standards* decision. However, unlike the other commodities in these closely linked cases, chlorine does not present marketplace considerations that can be said to render it comparable to other commodities.⁶ Similarity in car ownership, lading weight, length of movement, value of the commodity, competition, traffic densities, and other "transportation characteristics" that are not related to risk fade to near irrelevance when it comes to moving this compressed poisonous gas over hundreds of miles

Tragic accidents in Macdonia, Texas, Graniteville, South Carolina, and elsewhere have underscored the seriousness of the chlorine transportation risk. Any rail carrier that is forced by

⁶ See Appendices 4-5 to this opening evidence, *infra*.

a shipper to transport chlorine literally risks ruinous liability. No amount of insurance can fully protect a rail carrier from that risk, and no freight rate can compensate CSXT for the huge risk it must involuntarily bear, as a result of its common carrier obligation.

Transporting chlorine is an obligation – not an opportunity. While plastics, plasticizers, and nitrobenzene represent commercial business opportunities that CSXT attempts to win in a competitive marketplace, chlorine represents a legally-imposed burden that CSXT would greatly prefer to avoid. Accordingly, comparisons simply should not be made between chlorine movements and movements of any other commodity.

At CSXT, chlorine transportation pricing is driven primarily by risk avoidance and mitigation considerations, not by profit maximization considerations. Thus, CSXT has been working to adjust rates on chlorine movements to discourage long-haul movements of chlorine, and to create incentives for users of chlorine to source their supplies – if they insist on shipping the product – from closer sources. Legacy contracts, commercial relationships involving other products, together with CSXT's desire to give shippers and receivers an opportunity to adjust have impeded the complete implementation of that strategy, but CSXT will continue to take steps to encourage chlorine shippers to act prudently in their sourcing decisions.

For these reasons, CSXT is proposing as its set of comparable movements in this case, comprised solely of chlorine movements. Those movements alone are properly viewed as comparable to the issue movements. The overwhelming majority of those movements originate in Niagara Falls, New York, or Natrium, West Virginia, the two origins for the issue movements. They follow similar routes and pass through many of the same High Threat Urban Areas. To the extent they follow the same routes, they are switched in the same yards, and move over the same track using the same train operations and signal systems. In short, the risk profiles for these

movements are similar, and *risk* is the most important factor to consider in identifying movements that are comparable to the issue movements of chlorine.

Thus, for example, as to issue traffic moving from Niagara Falls to New Johnsonville, CSXT proffers a number of comparable movements originating at Niagara Falls and moving westerly through Buffalo, Erie, Ashtabula, and Cleveland. Of those, a significant proportion continue on through Columbus (the state capital) and Cincinnati. Others follow the Niagara Falls-New Johnsonville traffic through Louisville.

As to the Niagara Falls to Carney's Point issue movement, moves originating at Niagara Falls and moving easterly across the CSXT "Water Level Route" through upstate New York and south along the Hudson River Line follow very similar routings to the issue traffic. Most of these movements have in common with the issue movement the fact that they pass through the most-populous portion of the United States.

CSXT continues to encourage receivers of chlorine to explore alternative products and processes that would eliminate or at least reduce their shipments of this product. Like other manufacturers, however, DuPont prefers to have the lowest possible rail rates available so it can purchase product from the cheapest source, regardless of length of haul, number of yard handlings, or the number of High Threat Urban Areas that must be traversed to transport the product to its destination.

CSXT is far from alone in its concerns regarding the transportation of chlorine. The Department of Transportation is engaged in a rulemaking that will require all railroads that transport or handle chlorine to engage in an extensive and burdensome annual route (and alternative route) analyses. See *Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments*, 71 Fed. Reg. 76834 (proposed Dec. 21, 2006) (to

be codified at 49 C.F.R. Parts 172 and 174); *see also* Appendix 5 to this opening evidence at 1-2, *infra*. Similarly, the Transportation Security Administration has called upon the railroads to implement voluntary actions designed to reduce time that chlorine and other toxic inhalation hazard chemicals spend in High Threat Urban Areas, and is also engaged in a rulemaking that will likely render many carrier-to-carrier interchanges unusable. *See* Rail Transportation Security Notice of Proposed Rulemaking, 72 Fed. Reg. 2488 (proposed Jan. 19, 2007) (to be codified at 49 C.F.R. Parts 1520 and 1580); *see also* Appendix 5 to this opening evidence, *infra* (excerpts from CSXT presentation to DuPont regarding TTH transportation risks and regulations). That rulemaking is likely to result in new routings and additional operating costs. The provisions of these pending rules are not yet known and present an additional element of uncertainty about increasing costs of transporting chlorine. *See id.* Indeed, should the Board enter a rate prescription concerning the chlorine movements at issue, it should provide for reopening and reconsideration in light of changed circumstances when pending (or additional) regulations and requirements are issued.

Because CSXT commenced its initiative to increase chlorine rates in the wake of the tragic accident involving another rail carrier at Graniteville, South Carolina, in 2005,⁷ comparisons of the challenged rates to rates for chlorine shipments in earlier years (*e.g.*, those movements in the Waybill Samples for 2002-2005) will not reflect the paradigm shift in CSXT's pricing philosophy for this type of highly dangerous chemicals traffic – a highly important fact

⁷ The NS Graniteville incident, which has been investigated and reported upon in depth, involved the rupture of a chlorine tank car and the release of approximately 90 tons of chlorine gas. Nine people died, and at least 250 people sought treatment for chlorine exposure. Approximately 5,400 residents within a mile of the site of the incident were forced to evacuate for nearly two weeks while the area was decontaminated. *See* Nat'l Transp. Safety Bd., *Collision of Norfolk Southern Freight Train 192 With Standing Norfolk Southern Local Train P22 With Subsequent Hazardous Materials Release at Graniteville, South Carolina, January 6, 2005*, Railroad Accident Report NTSB/RAR-05/04. PB2005-916304, Notation 7710A, at v (2005).

that must be considered in any evaluation of the reasonableness of the rates at issue in the instant Complaint

2. The Challenged Movements

The first of the three challenged chlorine movements – all of which originate and terminate on CSXT – is from an Olin Corporation facility at Niagara Falls, New York, to a DuPont facility located in New Johnsonville, Tennessee (on the Tennessee River, roughly midway on CSXT's mainline running between Nashville and Memphis). This movement travels approximately 881 miles, and is routed Niagara Falls-Buffalo-Cincinnati-Nashville-New Johnsonville, passing through a number of major population centers, including Buffalo, Erie, Cleveland, Dayton, Cincinnati, Louisville and Nashville.

CSXT has calculated the unadjusted URCS variable costs for this movement as [REDACTED] per car, generating an R/VC ratio of [REDACTED].

The second challenged movement originates at a PPG facility at Natrium, West Virginia (located on the Ohio River, south of Wheeling) and moves to the same DuPont facility at New Johnsonville, Tennessee. DuPont concedes that CSXT's rail service for this movement is strictly a "secondary outlet" to barge service, which is the preferred and overwhelmingly dominant modal choice for the large volumes moving between these points. *See* First Amended Complaint, Ex. A at 2, Docket No. 42100. In fact, DuPont states that it used CSXT's service for only 83 carloads between Natrium and New Johnsonville during 2006, *see* First Amended Complaint ¶ 6, the equivalent of a mere *seven* bargeloads. As CSXT will explain in its reply evidence, it does not have market dominance over this movement, and the Board should dismiss this part of DuPont's Complaint on that basis alone.

These relatively few carloads are routed Natrium-Brooklyn Junction (WV)-Russell (KY)-Cincinnati-Nashville-New Johnsonville, a distance of approximately 723 miles. This route

passes through population centers such as Charleston, WV (the state capital), Huntington, Cincinnati, Louisville and Nashville. CSXT has calculated the unadjusted URCS variable costs for this movement as [REDACTED] per carload, generating an R/VC ratio of [REDACTED]

The third movement in this Complaint is from Olin Corporation's plant at Niagara Falls to a DuPont facility at Carneys Point, New Jersey, a distance of approximately 588 miles. This traffic lane, which transits such population centers as Buffalo, Albany, the New York/Northern New Jersey Metro area, Philadelphia and Camden, moved nearly three times as many carloads of chlorine during 2006 than the other two lanes in this Complaint combined.

CSXT has calculated the unadjusted URCS variable costs for this movement as [REDACTED] per carload, generating an R/VC ratio of [REDACTED].

CSXT has identified thirteen relevant factors for the selection of comparable movements to the issue traffic. Application of these factors to the Waybill Samples for 2002-2005 resulted in the identification of 111 comparable movements with an average R/VC ratio of [REDACTED], as described below in Section II D.

CSXT's review of the Board's recently published revised RSAM calculations has revealed the need for a significant adjustment to the calculation of the shortfall component of the RSAM. *Cf. Simplified Standards for Rail Rate Cases*, Ex Parte 646, Decision at 23 n.41 (July 26, 2006) (noting that parties have a role in "independently verifying the current RSAM and R/VC_{>180} calculations").⁸ As explained in Section II.D, *infra*, the RSAM calculated by the Board does not account for the effect of taxes in determining the amount of revenue a carrier would

⁸ CSXT only very recently discovered the need for this adjustment. The Board published RSAM calculations on December 11, 2007, *see* STB Ex Parte 347 (Sub-No. 2), *Rate Guidelines – Non-Coal Proceedings* (Dec. 11, 2007), and published the final corrected version of those calculations on December 20, 2007. On January 29, 2008, in response to DuPont's request, the Board made its RSAM workpapers available to the parties, and representatives of CSXT and DuPont then met with Board staff to review those workpapers.

need to earn to achieve revenue adequacy. The shortfall component of the RSAM ultimately derives from the Board's railroad industry cost of capital, which is calculated on an after-tax basis. But a carrier cannot make up that shortfall simply by earning pre-tax revenue equivalent to the shortfall – rather, the carrier must earn sufficient revenue to account for the shortfall *after* taxes. The necessary adjustments to RSAM are straightforward and are set forth in Section II.D.

A further adjustment is necessary because the revenues and costs of comparison group traffic from the 2002-2005 period are not comparable to the revenues and costs of the challenged rates, which were established in mid-2007. CSXT proposes two alternative methods for adjusting the revenues and costs of CSXT's initial proposed comparison group traffic to 2007 levels. Applying the corrected RSAM and other appropriate adjustments to the chlorine comparison groups, and applying the appropriate confidence interval results in adjusted R/VCs that are higher than those for the issue movements.

C. Serious Flaws in the Three Benchmark Approach Preclude the Board from Granting DuPont Relief Under That Approach in This Case

CSXT believes the Three Benchmark approach itself, and the rules and limitations the Board adopted to govern cases brought under that approach, are fundamentally flawed. Therefore, CSXT objects to any application of those procedures to this and the two companion rate reasonableness complaints filed by DuPont. CSXT (along with a number of other parties) has appealed the *Simplified Standards* decision to the Court of Appeals for the District of Columbia Circuit, and CSXT anticipates that the Court of Appeals' decision will require the Board to reconsider several aspects of the *Simplified Standards*. See *CSX Transportation, Inc. v. STB*, 07-1369.

CSXT raised most of its concerns in its comments in the *Simplified Standards* rulemaking proceeding. See, e.g., Ex Parte 646, CSXT/NS Opening Comments (Oct. 24, 2006); Ex Parte

646, CSXT/NS Reply Comments (Nov. 30, 2006); Ex Parte 646, CSXT/NS Rebuttal Comments (Jan. 11, 2007). While CSXT recognized in its comments that the Board had an obligation to create alternative methodologies for rate reasonableness cases that are truly too small for the Stand Alone Cost methodology, *see* 49 U.S.C. § 10701(d)(3). CSXT identified serious flaws in the Board's proposed Three Benchmark approach. Those flaws range from the Board's reliance on a formula to mechanically determine rates, to the Board's refusal to consider evidence of the actual costs of issue movements, to the impropriety of comparing historical rates to current rates without accounting for changes in market conditions. *See* CSXT/NS Opening Comments at 22-25. Moreover, CSXT made clear that an approach as "rough and imprecise" as the Three Benchmark Approach – and one so divorced from well-established, sound, and judicially approved regulatory economics (including differential pricing principles) – should only be applied "as a last resort" in the very smallest cases. *Id.* at 25 (quoting Ex Parte 646, *Simplified Standards for Small Rail Rate Cases*, Decision at 11, 28 (July 26, 2006). Accordingly, CSXT made clear its position that the Board's proposed eligibility limit of \$200,000 "MVC" should be the ceiling on cases allowed to use the Three Benchmark approach. *See, e.g., id.*

The Board's Decision rejected many of CSXT's objections and its suggested improvements to the Three Benchmark approach. Worse, the Board essentially quintupled the eligibility limit for the Three Benchmark approach to \$1,000,000, without prior notice to the parties of its intent to adopt such a significant change. CSXT reaffirms and incorporates its prior objections to the Three Benchmark Approach herein, the most significant of which are briefly described below.⁹ CSXT recognizes that the Board has previously ruled on several of the issues

⁹ CSXT does not attempt to fully describe its objections here, as they were detailed in its filings and those of other participants in the rulemaking, and the Board is generally familiar with those objections. Rather, CSXT simply reiterates those continuing objections, and asks that the Board

in this section, but raises them here in light of the unusual procedural posture of this case – not only is this the first application of the new *Simplified Standards*, it is an application of those *Standards* during the pendency of judicial review of those new rules.

First, CSXT objects to the Board's refusal to limit the Three Benchmark approach to truly small cases where a more precise analysis is impractical. The Board's decision to raise the eligibility threshold to \$1,000,000 for the Three Benchmark Approach subjects far too much traffic to a rate-comparison methodology that is fundamentally at odds with constrained market pricing principles. *See* Ex Parte 646, CSXT/NS Opening Comments at 25. Subjecting such larger disputes to a non-SAC approach that is not grounded in sound economics, theory, or policy is arbitrary and capricious. CSXT submits that the litigation that the expanded application of the Three Benchmark approach has fostered – rate complaints concerning a handful of cherry-picked O-D pairs, brought by one of CSXT's largest customers, a Fortune 100 corporation with tens of billions of dollars in annual revenue – is not appropriate for such a simplified, rough, and imprecise approach.

Second, CSXT objects to the Three Benchmark approach's "presumption" that an adjusted R/VC ratio derived from a group of comparable movements establishes a maximum reasonable rate. Mechanical application of formulas is not an effective method for assessing rate reasonableness – particularly when the sort of formula adopted by the Board was severely criticized by the D. C. Circuit in *Burlington Northern Railroad Co. v ICC*, 985 F.2d 589, 597 (D.C. Cir. 1993). *See* Ex Parte 646, CSXT/NS Opening Comments at 22-24; Ex Parte 646, CSXT/NS Rebuttal Comments at 28-31. And, it is insufficient for the Board to consider "other

consider them in this proceeding. Other concerns and objections described below have arisen in response to the Board's recent decisions and rulings concerning how it will apply the *Simplified Standards*. If the Board does not correct the flaws CSXT has identified, CSXT reserves the right to raise them on appeal.

relevant evidence" *after* erecting a presumption that a formulaic result is correct. Instead, all relevant evidence should be considered together and on an equal footing, to allow a fair and economically sound evaluation whether a rate is reasonable.

Third, CSXT objects to the Board's categorical refusal to consider evidence of the actual variable costs of comparable movements, through movement-specific adjustments to URCS system average costs. See Ex Parte 646, CSXT/NS Opening Comments at 20-21; Ex Parte 646, CSXT/NS Rebuttal Comments at 39-43. Variable costs are central to the Three Benchmark approach, because the Board's ultimate rate reasonableness determination is largely a function of a comparison of R/VC ratios. Because variable costs are at the heart of the Three Benchmark approach, the rational application of that approach must take into account, at the very least, the most significant and readily ascertainable *actual* variable costs of the movements. As the comments in Ex Parte 646 (and in Ex Parte 657) demonstrated, many of the most important adjustments to URCS can be made with little litigation expense; and movement specific adjustments can have significant effects on the calculation of variable costs. Nowhere is the need for use of actual variable costs more evident than in cases like these, where DuPont has challenged the rates for movements of hazardous materials, including a poisonous gas. It is indisputable that such movements impose substantial additional costs on rail carriers, including very significant additional liability insurance costs, additional handling costs; more stringent and costly regulatory requirements for transporting such hazardous chemicals; and the difficult-to-quantify, but very real and significant risks (including the risk of potentially ruinous liability in the event of an accidental release of a TIH) borne by the carrier that is compelled by law to transport such materials. Particularly in the context of hazardous materials, the Board must use evidence regarding movement-specific costs if it is to accurately calculate meaningful R/VC

ratios for the comparison group. And, it must consider the essentially unquantifiable risks that are imposed on a carrier that transports TIH, PIH, and other hazardous materials, as well as the public policy implications of requirements, decisions, or rulings that encourage more and longer movements of such materials through our nation's communities.

Fourth, CSXT objects to the Board's refusal to consider evidence of product and geographic competition in Three Benchmark cases. Both product competition and geographic competition are relevant factors in the real-world marketplace, and each plainly affects market rates for rail transportation.¹⁰ In these cases, prohibition of such evidence ignores DuPont's actual use of multiple sources and numerous available alternatives for some of the issue traffic, which could result in an erroneous determination of CSXT's alleged "market dominance" and the Board's evaluating rates over which it lacks jurisdiction.¹¹ As such, the Board should not preclude parties from presenting evidence of product and geographic competition where such evidence is appropriate.

Fifth, CSXT objects to the Board's failure to adequately address the inherent bias caused by using rates from 2002-2005 to judge the reasonableness of a rate in 2007-2008. *See* Ex Parte 646, CSXT/NS Opening Comments at 24; Ex Parte 646, CSXT/NS Rebuttal Comments at 36. The Board has provided the parties with a Waybill Sample of movements from 2002 through

¹⁰ [REDACTED]

¹¹ Some of these same movements also have competitive transportation alternatives. If the Board accepts CSXT's position that it lacks market dominance those movements due to transportation competition, the effect of the Board's refusal to consider product and geographic competition would be mooted for those specific movements or cases.

2005 Pursuant to the Three Benchmark procedures, the parties are required to select “comparable” movements from those Samples. But a rate from 2005 or earlier cannot be compared reliably to a 2008 rate without fully accounting for changes in the marketplace between 2005 and 2008.¹² Indeed, as CSXT explained in its Motion to Hold the Proceedings in Abeyance, rail transportation rates have risen significantly in recent years as a result of increasing demand and tightening capacity. Failure to adjust for this regulatory lag properly would be arbitrary and capricious. The Board’s proposed solution – to allow the parties to produce evidence of changes in the marketplace *after* the Board establishes a presumptive maximum reasonable rate – is inadequate. *See* Decision, STB Docket No. 42099 *et al.*, at 2 (Jan. 22, 2008); *Simplified Standards* at 22, 77 (further requiring that parties may only submit “other relevant factors” evidence if it “quantif[ies] the impact of these ‘other relevant factors’ on the presumed maximum lawful rate”). A rate ceiling that does not reflect current market conditions should be deemed presumptively *incorrect* in order to avoid arbitrary rate reasonableness presumptions and determinations. The Board must provide for an adequate means of fully reflecting current market rates for comparison movements, and incorporate that means to its process of establishing a presumptive maximum reasonable rate.

Sixth, CSXT objects to the Board’s recent ruling that parties to a “Three Benchmark” case must base their selection of a comparison group and any advocacy for a particular comparison group solely on: (i) the Waybill Sample data released to the parties by the Board or (ii) publicly available information, and that nearly all other evidence or information concerning comparable movements is inadmissible. *See* Decision, STB Docket Nos. 42099 *et al.*, at 2-4

¹² Summaries of rate and revenue change data for the relevant period are included in Appendices 1 and 2 to this opening evidence, *infra*.

(late release Jan. 31, 2008)¹³; Decision, STB Docket Nos 42099 *et al* , at 2-3 (Jan. 15, 2008)

Such an evidentiary limitation effectively makes it impossible to present evidence (concerning many potentially relevant comparability factors, including factors that the Board expressly identified in *Simplified Standards* as relevant to the determination of comparability). *See* CSXT Motion for Clarification at 3-5 (filed Jan. 18, 2008). For example, as CSXT explained in its Motion for Clarification, neither the Waybill Sample nor public data provides information sufficient to demonstrate whether a shipper has commercial leverage over a carrier; or if a movement has competitive rail transportation options; or if a movement has other competitive transportation options; or the “demand elasticity” of a movement – factors which the Board expressly found were relevant comparability factors *Simplified Standards* at 17. The Board should reverse its unduly restrictive rulings and allow the parties to a Three Benchmark proceeding to introduce non-public information from outside of the Waybill Sample that bears on comparability.

II. Comparable Movements and Benchmark Calculations

A. Initial General Comparability Factors

For the movements covered by the Amended Complaint, CSXT drew comparable movements from the Waybill Samples provided by the Board for the years 2002 through 2005, representing the most recent four years for which Waybill Samples and corresponding RSAM figures are available.¹⁴ Each year’s file contained approximately 120-130,000 records listing

¹³ On reconsideration, the Board removed its absolute prohibition on other evidence to allow one category of additional evidence – traffic density evidence *See* January 31, 2008 Decision at 4. Unfortunately, the timing of that decision allowed the parties only one working day to attempt to incorporate such evidence before the deadline for filing opening evidence.

¹⁴ The comparability factors listed here are based on information that can be identified from the Waybill Samples or publicly available information for the chlorine movements. As CSXT emphasized above, it believes several other factors are also relevant to comparability, but those

individual shipments in which CSXT participated. CSXT then applied eleven criteria to extract an initial group of records for the movements in DuPont's Complaint. Application of the same initial eleven criteria (summarized in Table 1) to the approximately 500,000 total CSXT Waybill Sample records identified a universe of approximately 3,600 potentially comparable shipments.

Table 1

Criteria	Waybill Field	Value
1. Covered Hoppers or Tank Cars	AAR	First digit = C or T
2. Chemical or Allied Products	STCC	First 2 digits = 28
3. Single Car Shipments	CARS	Less than 6
4. Private Cars	OWNER	P
5. Local Moves	ORIG_RR and TERM_RR	Both fields = CSXT
6. No Short-Line Traffic	FSAC_ORIG and FSAC_TERM	First digit $\neq$ 6
7. Longer than 200 miles	TOTAL_DIST divided by 10	Miles > 200
8. Domestic	ORIG_ST and TERM_ST	US states only
9. R/V/C Greater Than 180%	Unexpanded revenues (F_REV divided by EXP_FACTOR) plus MISC_CHG divided by unexpanded costs (TOTAL_COST divided by EXP_FACTOR)	> 180%
10. Fuel Surcharge	MISC_CHG	Not Blank
11. No Issue Traffic	STCC, ORIG_CITY, ORIG_ST, TERM_CITY, TERM_ST	Specific combinations – See Appendix 2

Below, CSXT describes each of those initial eleven comparability factors and reasons CSXT believes they are appropriate criteria for identifying potentially comparable movements.

1. *Car Type*: The issue movements use Tank cars. A Tank car is a specialized type of equipment that is significantly different, has different transportation characteristics, and is used to move significantly different commodities than those moved in other types of cars. Therefore,

factors cannot be determined from the Waybill Sample or public data, and the Board recently ruled that evidence from any other sources is inadmissible for purposes of selecting comparable movements. *See* STB Docket No. 42099 *et al* , Decision at 3, 4 (Jan. 15, 2008).

it is appropriate to limit comparable movements to those that travel in the same type of car as the issue movements.

2. *STCC*: The issue movements fall within the broad two-digit Standard Transportation Commodity Code ("STCC") 28, which includes all Chemicals and Allied Products. Applying the STCC 28 criterion as an initial commodity screen removes movements of commodities that are so unlike the issue commodities that they do not even fall into the broad and diverse class of all "chemicals and allied products"

3. *Shipment Size*: The issue traffic moves in "single-car" shipments (as used by URCS, the term "single-car" refers to all movements of 1-5 cars). Accordingly, CSXT limited comparable movements to those Waybill Sample records for "single-car" blocks (*i e*, 1-5 carloads).

4. *Car Owner*: The issue traffic all uses private cars. Because the use of private equipment is a significant component of rail transportation costs and factor in setting rates, movements in cars owned by CSXT are not comparable to movements in private cars. Accordingly, CSXT applied a selection criterion limiting potentially comparable traffic to movements in private cars.

5. *Traffic Class*: All of the challenged rates apply to local shipments, *i e*, movements that are originated and terminated by CSXT, without participation of another rail carrier. CSXT limited potentially comparable movements to traffic that is "local" to CSXT largely because it is not possible to develop from the Waybill Sample accurate R/VC ratios for the CSXT portion of joint-line movements. Instead of using actual revenues, the Waybill Sample uses the Board's modified mileage prorate approach to estimate revenues for each carrier's portion of a joint-line movement. Depending on the circumstances, market forces, and other factors affecting a given movement, those constructive revenue numbers may substantially over- or under-estimate CSXT's revenues for its portion of a joint movement. Limiting comparable movements to local traffic eliminates the potential for distortion of the R/VC ratios due to such inaccurate revenue data. And, *Simplified Standards* expresses a general preference for excluding non-defendant traffic from comparison group determinations. See *Simplified Standards* at 82

6. *CSXT Single-Line*. CSXT provides service for all of the complaint traffic on its system without utilizing a short-line railroad or switching carrier. CSXT excluded any shipments that were originated or terminated by a short-line or switching carrier based on the Freight Station Accounting Code ("FSAC") information reported in the CWS. Although these shipments are reported in the CWS as "CSXT local" movements, the use of CSXT's system-average URCS variable costs for the portion of the movement served by the short-line does not produce a R/VC ratio reflective of CSXT's experience, and does not provide a comparable basis for evaluating the challenged rates.

7 *Distance of Movement Exceeds 200 Miles*: As the Board has noted, “length of movement” is an appropriate consideration in determining comparability. *See Simplified Standards* at 17. CSXT believes that the most significant effects of length of movement on variable costs and revenues are found in the difference between relatively short hauls, on one hand, and medium and longer distance movements, on the other hand. Accordingly, CSXT has excluded from comparable group consideration all movements of 200 miles or less.

8. *Domestic*. The issue movements travel entirely within the geographic boundaries of the United States. Differing laws, regulatory requirements and costs in Canada make it difficult to make meaningful comparisons between costs and revenues for movements in Canada and movements in the United States. Moreover, the Board does not collect cost and revenue data concerning movements in Canada by Canadian carriers. Because of the difficulties in making reliable “apples-to-apples” comparisons between U.S. domestic movements and movements whose origin or destination is in Canada, CSXT excluded from its comparison group any shipments that originated or terminated in Canada.

9 *Traffic with R/VC > 180%*. In accordance with the *Simplified Standards* decision, CSXT limited potentially comparable movements to those generating R/VC ratios greater than 180%. *See Simplified Standards* at 17 (indicating that R/VCcomp should be used as evidence of reasonable R/VC levels of “potentially captive traffic,” which the Board defines as “traffic priced above the 180% R/VC”).¹⁵ In order to determine the R/VC for each record, CSXT followed the approach used by the Board in developing its RSAM calculations, *i.e.*, it included amounts reported as Miscellaneous Charges.¹⁶

10 *Fuel Surcharge*: The challenged rates include a fuel surcharge. CSXT excluded from its comparison groups any shipments to which a fuel surcharge did not apply. As fuel costs skyrocketed this decade, CSXT (like nearly every other transportation provider) determined that it was essential to institute a new fuel surcharge mechanism to allow it to attempt to recover those dramatically increased costs.¹⁷ CSXT was not able to apply this fuel surcharge to all of its

¹⁵ Advocates for increased regulation have distorted the expression “captive shipper” to the point that they sometimes cavalierly apply it to any shipper who pays a rate above the Board’s jurisdictional threshold. Respectfully, CSXT believes “captive” is an inaccurate characterization for such traffic. Indeed, that phrase should not even be used to connote all movements over which a carrier is determined to have market dominance.

¹⁶ *Rate Guidelines – Non-Coal Proceedings*, STB Ex Parte No. 347 (Sub-No. 2) (Dec. 11, 2007).

¹⁷ For example, according to the federal Energy Information Administration, from January 2002 to January 2008, diesel fuel prices nearly tripled, increasing from 115.3 cents per gallon to 330.8 cents per gallon, or 187%. *See* U.S. Energy Information Administration, U.S. No. 2 Diesel Retail Sales by All Sellers index, available at <http://tonto.eia.doe.gov/dnav/pet/hist/ldr001M.htm>. From January 2002 to October 2007 (the month DuPont filed its Amended Complaints), those same prices increased by approximately 167%. *See id.* From January 2002 to December 2005 (the period covered by the Waybill Samples provided to the parties for use in

traffic immediately. Over time, CSXT has aggressively sought to negotiate fuel surcharges in new contracts as old contracts expire, as well as in its common carrier rates.

11. *Non-Issue Traffic*: CSXT's eleventh general criterion excludes any of the issue movements contained in the Waybill Samples. It makes little sense to "compare" the current rates charged on issue traffic with historical rates on that same traffic, as the overarching purpose of the Three Benchmark approach is to compare the issue rates with rates charged for *other* similar traffic. Moreover, because of the multi-year lag in the issuance of Waybill Samples, inclusion of the issue movements could skew the comparison by artificially deflating (or, in a time of falling rail rates, inflating) comparison group revenues.

B. Additional Specific Comparability Factors

CSXT used two other factors to develop its comparable movement group for the issue movements. Those factors, and the Waybill Sample field and values used to apply them, are summarized in Table 2.

Table 2

Criteria	Waybill Field	Value
Car Type – Tanks	ΛAR	First digit = T
Chlorine	STCC	2812815

Following is a summary of the two specific additional factors CSXT used to complete its identification and selection of the initial comparison group.

First, CSXT limited the car type to tank cars, which is the type of equipment used by the issue traffic and all movements of chlorine by rail.

Second, CSXT limited the comparable group to chlorine movements. As the Board and DuPont are well aware, "toxic-by-inhalation" commodities are a particularly dangerous group of extremely hazardous materials, with their own unique transportation characteristics, and special

this case), diesel fuel prices more than doubled, increasing from 115.3 cents per gallon to 244.3 cents per gallon, or 112%. See *id.* Diesel fuel price changes for other periods may be found in the same EIA source.

safety, handling, and security requirements. The risks of transporting non-TIH commodities simply are not comparable to TIH commodities.

Chlorine and anhydrous ammonia account for the overwhelming majority of all TIH traffic carried by CSXT.¹⁸ Looking back in time, before risk mitigation became CSXT's primary focus for chlorine traffic, CSXT pricing reflected primarily market considerations. The markets for chlorine and anhydrous ammonia, however, are much different. For example, anhydrous ammonia has long been subject to much greater active intermodal transportation competition than chlorine. Unlike chlorine, anhydrous ammonia is frequently moved by over the road trucks and is also moved via pipeline in some locations and markets. Thus, while approximately 95% of chlorine is shipped by rail in the United States, only approximately 45% of anhydrous ammonia is shipped by rail. Unlike chlorine, the market for anhydrous ammonia is a global market, and significant quantities of anhydrous ammonia are imported to the United States. This allows importers to plan their logistics around transportation alternatives. Also, many ammonia movements pass through fewer major cities. Finally, because there are numerous chlorine movements originating from other shippers in the Niagara Falls area, limiting the comparable movements to chlorine facilitates a close comparison of movements of the same commodity originating in the same area. Therefore, CSXT has limited its comparable group to movements of chlorine (identified in the Waybill Samples as STCC 2812815).

¹⁸ Other TIH commodities such as sulfur dioxide, ethylene oxide, and fuming sulfuric acid are not useful for purposes of a comparable movement analysis because they come from many different and disparate origins sources and travel on a variety of routes (with varying density and capacity) to a variety of different destinations. In addition, many movements of these other commodities are not local to CSX but instead move on joint line rate authorities. See Section II.A.5, *supra* (describing the reasons that joint line movements are not appropriate for inclusion in a comparison group where the issue traffic is local to the defendant carrier).

CSXT's initial comparison group for chlorine, generated by the application of all of the factors described above, consists of 111 movements. The specific movements that make up the comparison group are summarized in Appendix 1 to this opening evidence, *infra*.

D. Preliminary Calculation of Maximum Reasonable Rates¹⁹

Once the comparison group has been identified, the next steps in the Three-Benchmark analysis are to apply the RSAM and $R/VC_{>180}$ factors and to calculate a confidence interval around the estimate of the mean of the "adjusted comparison group." *Simplified Standards* at 17. We describe each step in turn

1. RSAM and $R/VC_{>180}$

a Correction of Board Published Benchmarks

In late December 2007, the Board published the results of its calculations of the RSAM and $R/VC_{>180}$ benchmarks for each Class I railroad by year for 2002-2005.²⁰ CSXT used these figures, with one significant adjustment to the calculation of the shortfall component of the RSAM. In *Simplified Standards*, the Board explained that it would modify its calculation of the RSAM.²¹ Specifically, the Board's RSAM is now designed to recover a carrier's revenue shortfall from the Board's annual revenue adequacy determination.²² That shortfall, which is calculated as the difference between the return on net investment that a carrier needs to earn in

¹⁹ Detailed, Highly Confidential workpapers showing and supporting the calculations described in this section have been filed with this CSXT Opening Evidence.

²⁰ See *Rate Guidelines – Non-Coal Proceedings*, STB Ex Parte No. 347 (Sub-No.2) (Dec. 11, 2007); *Rate Guidelines – Non-Coal Proceedings*, STB Ex Parte No. 347 (Sub-No.2) (Dec. 20, 2007).

²¹ *Simplified Standards* at 19-20.

²² *Id.* Prior to this change, the RSAM was designed to allow a carrier's reserves to cover all of its fixed costs. *Id.* at 19 (citing *Simplified Guidelines*, 1 STB 1004, 1027 (1996)).

income taxes. The calculation is straightforward and can be performed using the figures provided by the Board in its RSAM determination. Specifically, the difference between the RSAM and the $R/VC_{>180}$ can be corrected to provide for taxes by dividing the amount by one minus the tax rate. Table 3 below sets forth the calculations and the corrected RSAM to $R/VC_{>180}$ ratio of each of the four years for which the RSAM was determined for this proceeding.

Table 3

	Board RSAM Mark-up	Board $R/VC_{>180}$	Shortfall (After-Tax)	Shortfall (Pre-Tax)	Corrected RSAM	RSAM / $R/VC_{>180}$ Ratio
	(1)	(2)	(3)=(1)-(2)	(4)=(3)/(1-tax rate)	(5)=(2)+(4)	(6)=(5)/(2)
2002	286%	238%	48%	■	■	■
2003	292%	239%	53%	■	■	■
2004	292%	231%	61%	■	■	■
2005	300%	236%	64%	■	■	■
Average	292%	236%	56%	■	■	■

b. 2007 Revenue and Cost Levels

After correcting the RSAM ratios, one further adjustment is necessary. Use of the cost and revenue data associated with the movements from the 2002-2005 period does not provide a comparable basis for evaluating the R/VC ratios of the challenged rates, which were established in mid-2007, and challenged in the Amended Complaint filed on October 30, 2007. In order to account for the significant market changes and dynamics and railroad cost inflation for the shipment of chemicals traffic that have occurred throughout the last five-plus years, CSXT

adjusted the revenues and costs of the comparison group traffic to current levels.²⁴ We present two alternatives for adjusting revenues – one based solely on publicly available information, the second using current revenue information for chemicals traffic that CSXT produced to DuPont in discovery – and a set of cost adjustments, based on publicly available data and standard rail costing approaches

i. Public Revenue Growth Information

For revenues, CSXT reports in its financial statements, SEC filings, and quarterly earnings reports revenue information by traffic groups. The relevant group for the issue traffic is Chemicals. Table 4 presents the revenues, units, and revenue per unit from those reports for CSXT Chemicals traffic for each year 2002 through 2007, and the annual percentage increase and composite increase from each year to 2007

Table 4

Year	Revenue (Millions)	Units (000s)	Revenue /Unit	Annual % Increase	Adjustment to 2007 Level
2002	\$964	542	\$1,779	--	1.41
2003	\$993	544	\$1,825	3%	1.38
2004	\$1,069	564	\$1,895	4%	1.33
2005	\$1,088	533	\$2,041	8%	1.23
2006	\$1,210	528	\$2,292	12%	1.10
2007	\$1,313	522	\$2,515	10%	1.00

Source: [http:// investors.csx.com/phoenix /html?c+92932&p=irol-reportsother](http://investors.csx.com/phoenix /html?c+92932&p=irol-reportsother).

CSXT adjusted the revenues from the 2002-2005 Waybill Sample records included in the chlorine comparison group by the factors in the far right column, based on the corresponding year.

²⁴ Summaries of rate and revenue data for relevant years for CSXT and other carriers are set forth in Appendix 4 to this opening evidence. *infra*

ii. CSXT 2007 Revenues Produced to DuPont in Discovery

As an alternative to the use of CSXT's system-wide chemicals revenue growth experience from 2002 through 2007, we incorporated the actual 2007 revenues for movements included in the chlorine comparison group. On December 19, 2007, CSXT provided the revenue and carload totals by O-D pair, commodity (7-digit STCC), and AAR car type.²⁵ For those comparison group movements from the 2002-2005 Waybill Samples that also moved in 2007 – based on a match of the O-D pair for chlorine shipments in tank cars – we substituted the actual revenue for the adjusted revenue produced by the CSXT system-wide increases for Chemicals traffic summarized in Table 4 above. For those comparison group records that did not have a corresponding entry in CSXT's discovery data, we used upon adjustments described in section II.D.1.b.i., above

iii. Public Railroad Cost Inflation

The adjusted R/VC ratios for the Waybill Sample moves included in the chlorine comparison group are based on the unadjusted URCS system-average costs at 2002-2005 levels. In order to account for the significant inflation that has occurred, we determined an annual cost factor for CSXT, based on publicly available information and standard indexing methods used in Board rate reasonableness proceedings. CSXT's expenses were classified among seven categories (*e.g.*, wages, materials and supplies) and the corresponding AAR cost indices were applied to determine an annual cost index for each year from 2002 through 2007. Table 5 summarizes the adjustments that were made to the variable costs from the 2002-2005 records in the comparison group to bring them to 2007 levels

²⁵ See CSXT Second Document Production to DuPont (Dec. 19, 2007) (Highly Confidential data on Compact Disk). DuPont has this data. If the Board wishes to review this data, CSXT would be willing to provide a copy upon request.

Table 5

Year	Adjustment to 2007 Level
2002	1.272
2003	1.225
2004	1.150
2005	1.059

Source: CSXT work paper "CSXT IE3 Index to 2007.XLS"

c Results

Applying the above revenue and costs adjustments to the chlorine comparison group results in an average R/VC of ■■■²⁶ based on the publicly available revenue growth information, and ■■■ when revenues are updated from the discovery data for movements that occurred in 2007. Applying the corrected RSAM and R/VC_{>180} benchmarks to the 2007-level R/VCs for the comparison group traffic produces an adjusted R/VC of ■■■ and ■■■ for the two revenue growth measures, respectively.

2. Confidence Interval and Upper Boundary

Once the average adjusted R/VC is developed for the chlorine comparison group, the next step is to estimate the confidence interval around the mean and determine the upper boundary for the range of R/VC ratios below which a rate could not be found unreasonable. This is determined based on the sample size, the standard deviation of the adjusted R/VC ratios, and a statistical measure "t-statistic" that estimates the 90% confidence interval. *See Simplified Standards* at 20-22. The following table summarizes the results.

²⁶ Consistent with *Simplified Standards*, this average is weighted based on each Waybill Sample record's sampling factor. *See Simplified Standards* at 21.

Table 6

Comparison Group	Records	R/VC	RSAM-Adjusted R/VC	Upper Boundary
<i>Publicly Available Chemicals Revenue Increases</i>				
Chlorine	111	████	████	████
<i>2007 Actual Revenue Update, where Available</i>				
Chlorine	111	████	████	████

The adjusted R/VC ratios of █████ and █████ for the chlorine comparison group are each higher than the R/VC's for all three issue-traffic movements. Thus, using CSXT's initial comparison group, the challenged rates are below the maximum reasonable rate and not unreasonable.

III. Other Relevant Evidence

CSXT believes the most important factors, inputs, adjustments, and analyses for the comparison group selection and application of the Three Benchmark analysis are described in the foregoing section. *See supra* Section II. CSXT further believes that all of those factors, adjustments, and analyses are appropriately conducted at the stage of the approach in which the Board is developing the presumptively reasonable rate, *i.e.*, before the Board considers what it terms "other relevant evidence." The entire process and analysis described in Section II is integral to any meaningful calculation of a "presumed maximum [reasonable] rate." *See Simplified Standards* at 21-22.²⁷ While CSXT reserves its right to present other relevant evidence based upon DuPont's submissions or other developments in these cases, it presently

²⁷ To be clear, CSXT is not saying that the precise comparison group it proposes in this evidence, or the exact numerical values it has calculated based upon that comparison group, must be adopted. Rather, CSXT's position is that the entire analysis and methodology it has described should be considered as part of the first, core phase of the process in which the presumptive rate ceiling is calculated, and not in the second (post-presumption) "other relevant evidence" phase.

believes that if the Board follows the entire process and analysis described in Section II before it considers “other relevant evidence,” such other evidence does not appear to be necessary in these cases.

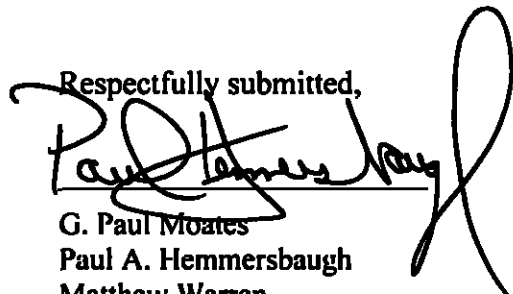
CSXT recognizes that it might be argued that some of the evidence presented in Section II should be considered as “other relevant evidence.” CSXT would disagree with such an argument, of course, and will respond to any such argument if it is made. Even if the Board were to conclude that any element of the Section II process should be considered as “other relevant evidence,” however, the quantified effect of those elements should be the same. For example, CSXT’s analysis has demonstrated the quantitative effect on the maximum reasonable rate of using 2007 revenues and costs to determine the relevant R/VC ratios, rather than using outdated data from 2002-2005. *See* Section II.D 1 b. When that demonstrated quantitative effect is applied to the maximum reasonable rate (*i.e.* in the first stage or as “other relevant evidence”), or how it is labeled, should make no difference – the effect would be the same. Similarly, CSXT has demonstrated the effect of the necessary adjustment to the RSAM figures calculated by the Board.²⁸ *See id.* The RSAM must be adjusted to allow for a consistent and coherent treatment of the effect of taxes. Whether that adjustment is labeled “RSAM adjustment evidence” or “other relevant evidence,” or something else, should make no difference – in all events, the effect should be the same. Thus, should the Board find that any of the evidence or elements of the analysis set forth in Section II be considered “other relevant evidence,” CSXT hereby

²⁸ It is difficult to envision any serious or logical argument that an adjustment to correct the RSAM should be conducted after the (incorrect) RSAM is applied to adjust comparison group R/VC ratios. Nonetheless, CSXT uses this example to illustrate the basic point that, once the quantitative effect of a factor on the maximum reasonable rate has been demonstrated, the effect of application of that factor should be the same regardless of how it is labeled or in which phase of the rate reasonable analysis it is applied.

incorporates to this Section III those elements, analysis and evidence – including their quantified effect on the maximum reasonable rate(s) for the issue traffic

Finally, CSXT understands the Board's admonition in the Decision that parties attempt to quantify the effect of "other relevant evidence" in Three Benchmark cases. In the case of chlorine, however, we respectfully submit that the Board did not intend to force the parties to ignore the huge (though extremely difficult to quantify with precision) risk of ruinous liability that CSXT must undertake with every carload of chlorine DuPont requires it to transport – no matter how difficult it would be to attempt to place a dollar amount on that risk. Recent tragic accidents involving such poisonous gases; the DOT, TSA, and other government agencies' special attention to these commodities; policy considerations associated with unnecessary long-distance movements of poison gas; and common sense all should inform the Board's decision as it attempts to fulfill its statutory duty to determine the reasonableness of the rates CSXT charges DuPont for the issue movements.

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Respectfully submitted,

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Counsel to CSX Transportation, Inc

Dated: February 4, 2008

APPENDIX 1

Appendix 1 contains Highly Confidential information subject to a Protective Order issued by the STB in this case, and therefore is not included in this Public filing.

APPENDIX 2

APPENDIX 3

STB Docket No. NOR 42100

E I du Pont de Nemours and Company v. CSX Transportation

Verification and Statement of Qualifications of Benton V Fisher

Benton V. Fisher is a Senior Managing Director at FTI Consulting, Inc., an economic and financial consulting firm with offices located at 1101 K Street, NW, Washington, DC 20005. Since 1991, Mr. Fisher has been involved in various aspects of transportation consulting including economic studies involving costs and revenues, traffic and operating analyses, and work with performance measurement and financial reporting systems.

Mr. Fisher holds a Bachelor of Science in Engineering degree from Princeton University. In 1990, he served as the Deputy Controller for the Bill Bradley for U.S. Senate Campaign. In 1991, he joined Klick, Kent & Allen, Inc., which was acquired by FTI Consulting, Inc in 1998. While with the firm Mr Fisher has performed numerous analyses for and assisted in the preparation of expert testimony related to merger applications, rate reasonableness proceedings, contract disputes, and other regulatory costing issues before the Interstate Commerce Commission, Surface Transportation Board, Federal Energy Regulatory Commission, Postal Rate Commission, Federal Court, and State Utility Commissions.

Mr Fisher is sponsoring portions of the testimony presented in Part II of the foregoing Opening Evidence of CSX Transportation, Inc. Mr. Fisher has read the testimony set forth in that section, and the statements contained therein are true and correct to the best of his knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. I further certify that I am qualified and authorized to sponsor and file this testimony.

Executed on February 1, 2008

Benton V. Fisher
Benton V. Fisher

STB Docket No. NOR 42100

E I du Pont de Nemours and Company v. CSX Transportation

Verification and Statement of Qualifications of Michael R. Baranowski

Michael R. Baranowski is a Senior Managing Director at FTI Consulting, Inc., an economic and financial consulting firm. His business address is 1101 K Street, NW, Washington, DC 20005. Since 1980, Mr. Baranowski has been involved in many aspects of transportation consulting including operational analyses, terminal switching studies, facility and equipment valuation, liquidation studies, merger studies as well as a variety of cost studies including the development of both short and long run marginal cost, variable cost and standalone costs. He has been responsible for developing costs and working with the Board's discounted cash flow model in stand-alone cost proceedings since 1987 and has sponsored testimony in a number of those proceedings.

Mr. Baranowski received his Bachelor of Science in Accounting degree from Fairfield University in 1980. In 1988, he joined Klick, Kent & Allen, Inc. ("KK&A"), which was acquired by FTI Consulting in 1998. While with KK&A and FTI, Mr. Baranowski has conducted a wide range of studies in both the transportation and telecommunications industries and testified in proceedings before the Interstate Commerce Commission, Surface Transportation Board, Federal Communications Commission, and various State Utility Commissions.

Mr. Baranowski is sponsoring portions of the testimony presented in Part II of the foregoing Opening Evidence of CSX Transportation, Inc. Mr. Baranowski has read the testimony set forth in that section, and the statements contained therein are true and correct to the best of his knowledge, information, and belief. A more detailed description of Mr. Baranowski's qualifications and experience is available upon request.

I declare under penalty of perjury that the foregoing is true and correct. I further certify that I am qualified and authorized to sponsor and file this testimony.

Executed on February 2, 2008


Michael R Baranowski

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

E.I. DUPONT DE NEMOURS AND COMPANY)

Complainant,)

v.)

Docket No. NOR 42100

CSX TRANSPORTATION, INC.)

Defendant.)

**VERIFICATION AND STATEMENT OF QUALIFICATIONS
STEPHEN J. LUBE**

My name is Stephen J. Lube. I am the Director of Marketing, Chemicals Division of CSX Transportation, Inc., and have been in this position since July 2004. Our offices are located at 500 Water Street, Jacksonville, Florida 32202.

I am sponsoring portions of testimony presented in Part I.A and II of the foregoing Opening Evidence of CSX Transportation, Inc. I have read the testimony set forth in those sections, and the statements contained therein are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this testimony.

Executed on this 31st day of January, 2008.

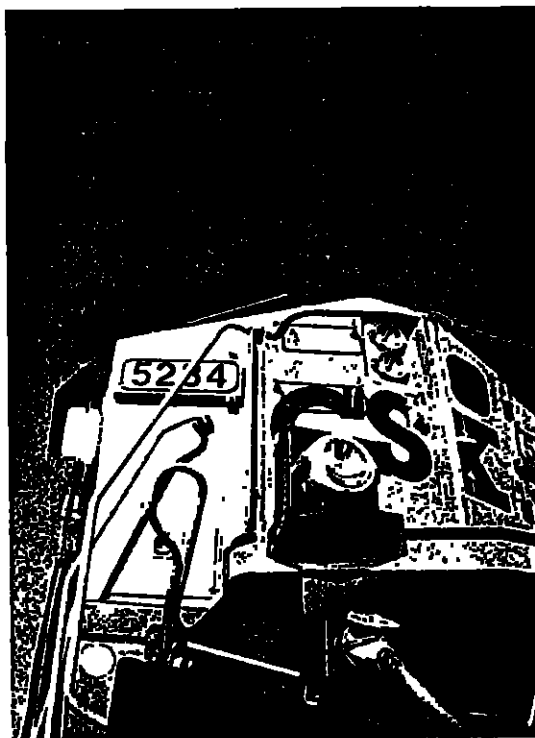


Stephen J. Lube



APPENDIX 4

How tomorrow moves



CSX QUARTERLY FINANCIAL REPORT

FOURTH QUARTER 2007

CSX Corporation
CONSOLIDATED STATEMENT OF EARNINGS
(Dollars in Millions, Except Per Share Amounts)

		(Unaudited)			(Unaudited)		
		Quarters Ended			Years Ended		
		Dec. 28,	Dec. 29		Dec. 28,	Dec. 29	
		2007	2006	\$ Change	2007	2006	\$ Change
Surface	Revenue	\$ 2,577	\$ 2,396	\$ 181	\$ 10,030	\$ 9,566	\$ 464
Transportation	Expense						
	Labor and Fringe	759	753	(6)	2,978	2,922	(56)
	Materials, Supplies and Other	467	496	29	2,040	1,964	(76)
	Fuel	357	271	(86)	1,210	1,112	(98)
	Depreciation	220	216	(4)	882	856	(26)
	Equipment and Other Rents	110	121	11	456	512	56
	Inland Transportation	63	61	(2)	240	242	2
	Gain on Insurance Recoveries (Note a)	(8)	(27)	(19)	(27)	(168)	(141)
	Total Expense	1,968	1,891	(77)	7,779	7,440	(339)
	Surface Transportation Operating Income	609	505	104	2,251	2,126	125
	Other Operating Income	-	2	(2)	5	12	(7)
Consolidated	Consolidated Operating Income	609	507	102	2,256	2,138	118
	Other Income - Net	76	62	14	93	95	(2)
	Interest Expense	(115)	(99)	(16)	(417)	(392)	(25)
	Earnings From Continuing Operations						
	Before Income Taxes	570	470	100	1,932	1,841	91
	Income Tax Expense (Note b)	(205)	(123)	(82)	(706)	(531)	(175)
	Earnings from Continuing Operations	365	347	18	1,226	1,310	(84)
	Discontinued Operations (Note c)	-	-	-	110	-	110
	Net Earnings	\$ 365	\$ 347	\$ 18	\$ 1,336	\$ 1,310	\$ 26
Earnings Per Common Share	Net Earnings Per Share, Assuming Dilution:						
	From Continuing Operations	\$ 0.86	\$ 0.75	\$ 0.11	\$ 2.74	\$ 2.82	\$ (0.08)
	Discontinued Operations	-	-	-	0.25	-	0.25
	Net Earnings	\$ 0.86	\$ 0.75	\$ 0.11	\$ 2.99	\$ 2.82	\$ 0.17
	Average Diluted Common Shares						
	Outstanding (Thousands)	425,475	463,524		448,280	465,934	
	Cash Dividends Paid Per Common Share	\$ 0.15	\$ 0.10		\$ 0.54	\$ 0.33	

See accompanying Notes to Consolidated Financial Statements on page 7.

CSX Corporation

SURFACE TRANSPORTATION VOLUME AND REVENUE (Unaudited) Volume (Thousands); Revenue (Dollars in Millions); Revenue Per Unit (Dollars)

Quarters Ended December 28, 2007 and December 29, 2006

	Volume			Revenue			Revenue Per Unit		
	2007	2006	% Change	2007	2006	% Change	2007	2006	% Change
Chemicals	125	126	(1) %	\$ 333	\$ 297	12 %	\$ 2,664	\$ 2,357	13 %
Emerging Markets	115	123	(7)	147	138	7	1,278	1,122	14
Forest Products	81	95	(15)	169	188	(10)	2,086	1,979	5
Agricultural Products	109	103	6	226	184	23	2,073	1,786	16
Metals	79	84	(6)	163	160	2	2,063	1,905	8
Phosphates and Fertilizers	92	87	6	111	89	25	1,207	1,023	18
Food and Consumer	49	57	(14)	106	116	(9)	2,163	2,035	6
Total Merchandise	650	675	(4)	1,255	1,172	7	1,931	1,736	11
Coal	447	445	0	654	574	14	1,463	1,290	13
Coke and Iron Ore	22	26	(15)	29	30	(3)	1,318	1,154	14
Total Coal	469	471	(0)	683	604	13	1,456	1,282	14
Automotive	109	112	(3)	215	210	2	1,972	1,875	5
Other	-	-	-	66	52	27	-	-	-
Total Rail	1,228	1,258	(2)	2,219	2,038	9	1,807	1,620	12
International	260	315	(17)	123	142	(13)	473	451	5
Domestic	273	237	15	227	204	11	832	861	(3)
Other	-	-	-	8	12	(33)	-	-	-
Total Intermodal	533	552	(3)	358	358	-	672	649	4
Total Surface Transportation	1,761	1,810	(3) %	\$ 2,577	\$ 2,396	8 %	\$ 1,463	\$ 1,324	11 %

Years Ended December 28, 2007 and December 29, 2006

	Volume			Revenue			Revenue Per Unit		
	2007	2006	% Change	2007	2006	% Change	2007	2006	% Change
Chemicals	522	528	(1) %	\$ 1,313	\$ 1,210	9 %	\$ 2,515	\$ 2,292	10 %
Emerging Markets	491	524	(6)	605	580	4	1,232	1,107	11
Forest Products	352	404	(13)	722	773	(7)	2,051	1,913	7
Agricultural Products	410	397	3	786	681	15	1,917	1,715	12
Metals	355	364	(2)	702	673	4	1,977	1,849	7
Phosphates and Fertilizers	362	362	-	421	354	19	1,163	978	19
Food and Consumer	212	245	(13)	441	477	(8)	2,080	1,947	7
Total Merchandise	2,704	2,824	(4)	4,990	4,748	5	1,845	1,681	10
Coal	1,771	1,798	(2)	2,483	2,259	10	1,402	1,256	12
Coke and Iron Ore	91	94	(3)	120	119	1	1,319	1,266	4
Total Coal	1,862	1,892	(2)	2,603	2,378	9	1,398	1,257	11
Automotive	439	463	(5)	839	847	(1)	1,911	1,829	4
Other	-	-	-	242	181	34	-	-	-
Total Rail	5,005	5,179	(3)	8,674	8,154	6	1,733	1,574	10
International	1,132	1,281	(12)	525	580	(9)	464	453	2
Domestic	979	898	9	807	786	3	824	875	(6)
Other	-	-	-	24	46	(48)	-	-	-
Total Intermodal	2,111	2,179	(3)	1,356	1,412	(4)	642	648	(1)
Total Surface Transportation	7,116	7,358	(3) %	\$ 10,030	\$ 9,566	5 %	\$ 1,409	\$ 1,300	8 %

CSX Corporation

SURFACE TRANSPORTATION VOLUME AND REVENUE (Unaudited)

Volume (Thousands), Revenue (Dollars in Millions); Revenue Per Unit (Dollars)

Quarters Ended September 28, 2007 and September 29, 2006

	Volume			Revenue			Revenue Per Unit		
	2007	2006	% Change	2007	2006	% Change	2007	2006	% Change
Chemicals	130	133	(2) %	\$ 336	\$ 313	7 %	\$ 2,585	\$ 2,353	10 %
Emerging Markets	128	133	(4)	157	150	5	1,227	1,128	9
Forest Products	87	100	(13)	182	200	(9)	2,092	2,000	5
Agricultural Products	101	102	(1)	190	176	8	1,881	1,725	9
Metals	89	91	(2)	181	176	3	2,034	1,934	5
Phosphates and Fertilizers	89	93	(4)	100	82	22	1,124	882	27
Food and Consumer	52	61	(15)	112	123	(9)	2,154	2,016	7
Total Merchandise	676	713	(5)	1,258	1,220	3	1,861	1,711	9
Coal	441	451	(2)	619	571	8	1,404	1,266	11
Coke and Iron Ore	24	24	-	38	31	(3)	1,250	1,292	(3)
Total Coal	465	475	(2)	649	602	8	1,398	1,267	10
Automotive	102	100	2	198	183	8	1,841	1,830	6
Other	-	-	-	59	49	20	-	-	-
Total Rail	1,243	1,288	(3)	2,164	2,054	5	1,741	1,595	9
International	280	338	(17)	129	158	(18)	461	467	(1)
Domestic	250	226	11	282	198	2	808	876	(8)
Other	-	-	-	6	8	(25)	-	-	-
Total Intermodal	530	564	(6)	337	364	(7)	636	645	(1)
Total Surface Transportation	1,773	1,852	(4) %	\$ 2,501	\$ 2,418	3 %	\$ 1,411	\$ 1,306	8 %

Nine Months Ended September 28, 2007 and September 29, 2006

	Volume			Revenue			Revenue Per Unit		
	2007	2006	% Change	2007	2006	% Change	2007	2006	% Change
Chemicals	397	402	(1) %	\$ 980	\$ 913	7 %	\$ 2,469	\$ 2,271	9 %
Emerging Markets	376	401	(6)	458	442	4	1,218	1,102	11
Forest Products	271	309	(12)	553	585	(5)	2,041	1,893	8
Agricultural Products	301	294	2	560	497	13	1,860	1,690	10
Metals	276	280	(1)	539	513	5	1,953	1,832	7
Phosphates and Fertilizers	270	275	(2)	318	265	17	1,148	964	19
Food and Consumer	163	188	(13)	335	361	(7)	2,055	1,920	7
Total Merchandise	2,054	2,149	(4)	3,735	3,576	4	1,818	1,664	9
Coal	1,324	1,353	(2)	1,829	1,685	9	1,381	1,245	11
Coke and Iron Ore	69	68	1	91	89	2	1,319	1,309	1
Total Coal	1,393	1,421	(2)	1,920	1,774	8	1,378	1,248	10
Automotive	330	351	(6)	624	637	(2)	1,891	1,815	4
Other	-	-	-	176	129	36	-	-	-
Total Rail	1,777	3,921	(4)	6,495	6,115	6	1,709	1,560	10
International	872	966	(10)	402	438	(8)	461	453	2
Domestic	706	661	7	580	582	-	822	880	(7)
Other	-	-	-	16	34	(53)	-	-	-
Total Intermodal	1,578	1,627	(3)	998	1,054	(5)	632	648	(2)
Total Surface Transportation	5,355	5,548	(3) %	\$ 7,453	\$ 7,170	4 %	\$ 1,392	\$ 1,292	8 %

Quarterly Flash

CSX CORPORATION

CSX REPORTS FOURTH-QUARTER EPS OF \$1.03 AND RECORD SURFACE TRANSPORTATION OPERATING INCOME

JACKSONVILLE, Fla., January 24, 2006 – CSX Corporation (NYSE: CSX) today reported fourth quarter 2005 net earnings of \$237 million, or \$1.03 per share, a 45 percent increase in earnings per share from continuing operations versus the same quarter in 2004.

"CSX delivered another quarter of strong performance in our Surface Transportation businesses," said Michael J. Ward, CSX Corporation chairman and chief executive officer. "Our operations team is gaining traction in executing the ONE Plan, even while re-constructing our storm-damaged infrastructure on the Gulf Coast."

The company's net earnings were driven by stronger Surface Transportation operating income, higher real estate sales and lower interest expense. Surface Transportation, which includes rail and intermodal operations, achieved

- the eighth consecutive quarter of both revenue and operating income growth,
- revenue of \$2.2 billion, which represents a quarterly record for the company;
- record fourth-quarter operating income of \$415 million, up 32 percent from the same period last year; and
- an operating ratio of 81.3 percent, an improvement of 4.3 points from the same quarter last year.

"We enter 2006 with a strong foundation, an economic environment that favors rail transportation, and momentum behind our key strategies," Ward said. "In addition, we are on schedule with our capacity expansion plans to further drive value for our customers and shareholders."

CSX executives will provide additional perspective on the quarterly results in its earnings conference call, beginning at 11 a.m. Eastern Time today. Those interested in participating may dial 866-248-8494 and ask for the CSX earnings call. Participants should dial in 10 minutes prior to the call. A live webcast and presentation materials will also be available on the company's website at www.csx.com in the Investors section.

In addition, detailed financial information is contained in the CSX Quarterly Flash document, which is also posted on the website and furnished on Form 8-K with the Securities and Exchange Commission (SEC).

CSX Corporation, based in Jacksonville, Fla., is one of the leading transportation companies, providing rail, intermodal and rail-to-truck transload services. The company's transportation network spans 22,000 miles, with service to 23 eastern states and the District of Columbia, and connects to more than 70 ocean, river and lake ports. More information about CSX Corporation and its subsidiaries is available at the company's website, www.csx.com.

This press release and other statements by the Company contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act with respect to, among other items: projections and estimates of earnings, revenues, cost-savings, expenses, or other financial items; statements of management's plans, strategies and objectives for future operation, and management's expectations as to future performance and operations and the time by which objectives will be achieved; statements concerning proposed new products and services; and statements regarding future economic, industry or market conditions or performance. Forward-looking statements are typically identified by words or phrases such as "believe," "expect," "anticipate," "project," and similar expressions. Forward-looking statements speak only as of the date they are made, and the Company undertakes no obligation to update or revise any forward-looking statement. If the Company does update any forward-looking statement, no inference should be drawn that the Company will make additional updates with respect to that statement or any other forward-looking statements.

Forward-looking statements are subject to a number of risks and uncertainties, and actual performance or results could differ materially from that anticipated by these forward-looking statements. Factors that may cause actual results to differ materially from those contemplated by these forward-looking statements include, among others: (i) the Company's success in implementing its financial and operational initiatives, (ii) changes in domestic or international economic or business conditions, including those affecting the rail industry (such as the impact of industry competition, conditions, performance and consolidation), (iii) legislative or regulatory changes, (iv) the inherent business risks associated with safety and security, and (v) the outcome of claims and litigation involving or affecting the Company. Other important assumptions and factors that could cause actual results to differ materially from those in the forward-looking statements are specified in the Company's SEC reports, accessible on the SEC's website at www.sec.gov and the Company's website at www.csx.com.

CSX
CORPORATION

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The accompanying unaudited financial information should be read in conjunction with the Company's most recent Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, and any Current Reports on Form 8-K.

CSX Corporation

SURFACE TRANSPORTATION VOLUME AND REVENUE (Unaudited)

Volume (Thousands); Revenue (Dollars in Millions); Revenue Per Unit (Dollars)

Quarters Ended December 29, 2006, and December 30, 2005

	Volume			Revenue			Revenue Per Unit		
	2006	2005	% Change	2006	2005	% Change	2006	2005	% Change
Chemicals	126	127	(1) %	\$ 297	\$ 274	8 %	\$ 2,357	\$ 2,157	9 %
Emerging Markets	123	122	1	138	124	11	1,122	1,016	10
Forest Products	95	106	(10)	188	183	3	1,979	1,726	15
Agricultural Products	103	90	14	184	147	25	1,786	1,633	9
Metals	84	88	(5)	160	150	7	1,905	1,705	12
Phosphates and Fertilizers	87	99	(12)	89	87	2	1,023	879	16
Food and Consumer	57	61	(7)	116	115	1	2,035	1,885	8
Total Merchandise	675	693	(3)	1,172	1,080	9	1,736	1,558	11
Coal	445	429	4	574	500	15	1,290	1,166	11
Coke and Iron Ore	26	21	24	30	21	43	1,154	1,000	15
Total Coal	471	450	5	604	521	16	1,282	1,158	11
Automotive	112	125	(10)	210	225	(7)	1,875	1,800	4
Other	-	-	-	52	27	93	-	-	-
Total Rail	1,258	1,268	(1)	2,038	1,853	10	1,620	1,461	11
International	315	310	2	142	138	3	451	445	1
Domestic	237	240	(1)	204	217	(6)	861	904	(5)
Other	-	-	-	12	11	9	-	-	-
Total Intermodal	552	550	-	358	366	(2)	649	665	(2)
Total Surface Transportation	1,810	1,818	- %	\$ 2,396	\$ 2,219	8 %	\$ 1,324	\$ 1,221	8 %

Years Ended December 29, 2006, and December 30, 2005

	Volume			Revenue			Revenue Per Unit		
	2006	2005	% Change	2006	2005	% Change	2006	2005	% Change
Chemicals	528	533	(1) %	\$ 1,210	\$ 1,089	11 %	\$ 2,292	\$ 2,043	12 %
Emerging Markets	524	505	4	580	513	13	1,107	1,016	9
Forest Products	404	439	(8)	773	717	8	1,913	1,633	17
Agricultural Products	397	357	11	681	550	24	1,715	1,541	11
Metals	364	361	1	673	570	18	1,849	1,579	17
Phosphates and Fertilizers	362	444	(18)	354	351	1	978	791	24
Food and Consumer	245	249	(2)	477	438	9	1,947	1,759	11
Total Merchandise	2,824	2,888	(2)	4,748	4,228	12	1,681	1,464	15
Coal	1,798	1,726	4	2,259	1,992	13	1,256	1,154	9
Coke and Iron Ore	94	83	13	119	88	35	1,266	1,060	19
Total Coal	1,892	1,809	5	2,378	2,080	14	1,257	1,150	9
Automotive	463	488	(5)	847	844	-	1,829	1,730	6
Other	-	-	-	181	104	74	-	-	-
Total Rail	5,179	5,185	-	8,154	7,256	12	1,574	1,399	13
International	1,281	1,274	1	580	545	6	453	428	6
Domestic	898	891	1	786	766	3	875	860	2
Other	-	-	-	46	51	(10)	-	-	-
Total Intermodal	2,179	2,165	1	1,412	1,362	4	648	629	3
Total Surface Transportation	7,358	7,350	- %	\$ 9,566	\$ 8,618	11 %	\$ 1,300	\$ 1,173	11 %

SURFACE TRANSPORTATION TRAFFIC AND REVENUE

Volume (Thousands), Revenue (Dollars in Millions), Revenue Per Unit (Dollars)

Fourth Quarter	Volume			Revenue			Revenue Per Unit		
	13 Weeks	14 Weeks	% Change	13 Weeks	14 Weeks	% Change	13 Weeks	14 Weeks	% Change
	2005	2004		2005	2004		2005	2004	
Merchandise									
Phosphates and Fertilizers	99	123	(20) %	\$ 87	\$ 86	(2) %	\$ 879	\$ 724	21 %
Metals	88	96	(8)	159	136	9	1,705	1,438	19
Forest Products	106	121	(12)	163	185	(1)	1,736	1,528	13
Food and Consumer	61	66	(8)	115	105	10	1,885	1,591	18
Agricultural Products	99	93	(3)	147	137	7	1,639	1,473	11
Chemicals	127	146	(13)	274	283	(3)	2,167	1,938	11
Emerging Markets	122	134	(9)	124	136	(10)	1,016	1,030	(1)
Total Merchandise	693	779	(11)	1,088	1,075	0	1,558	1,390	13
Automotive	125	135	(7)	225	228	(1)	1,800	1,668	7
Coal, Coke and Iron Ore									
Coal	429	440	(3)	500	460	9	1,166	1,045	12
Coke and Iron Ore	21	20	5	21	18	17	1,000	900	11
Total Coal, Coke and Iron Ore	450	460	(2)	521	478	9	1,166	1,039	11
Other	-	-	-	27	20	35	-	-	-
Total Rail	1,268	1,374	(8)	1,833	1,801	3	1,461	1,311	11
Intermodal									
Domestic	249	288	(10)	206	220	(8)	858	821	5
International	310	341	(9)	122	133	(8)	394	390	1
Other	-	-	-	38	26	46	-	-	-
Total Intermodal	559	629	(10)	366	379	(3)	645	622	7
Total Surface Transportation	1,818	1,993	(8) %	\$ 2,219	\$ 2,180	2 %	\$ 1,221	\$ 1,099	11 %
Year	Volume			Revenue			Revenue Per Unit		
	52 Weeks	53 Weeks	% Change	52 Weeks	53 Weeks	% Change	52 Weeks	53 Weeks	% Change
	2005	2004		2005	2004		2005	2004	
Merchandise									
Phosphates and Fertilizers	444	471	(6) %	\$ 351	\$ 341	3 %	\$ 791	\$ 724	9 %
Metals	351	380	(5)	570	511	12	1,579	1,345	17
Forest Products	439	465	(6)	717	681	5	1,633	1,465	11
Food and Consumer	249	245	2	438	377	16	1,769	1,539	14
Agricultural Products	357	358	-	550	512	7	1,541	1,438	7
Chemicals	533	564	(5)	1,009	1,009	2	2,043	1,895	8
Emerging Markets	505	506	-	513	504	2	1,016	998	2
Total Merchandise	2,888	2,987	(3)	4,228	3,995	6	1,464	1,337	9
Automotive	488	507	(4)	844	835	1	1,739	1,647	5
Coal, Coke and Iron Ore									
Coal	1,728	1,659	4	1,992	1,714	16	1,154	1,033	12
Coke and Iron Ore	83	71	17	88	66	33	1,060	830	14
Total Coal, Coke and Iron Ore	1,809	1,730	5	2,080	1,780	17	1,150	1,029	12
Other	-	-	-	104	84	24	-	-	-
Total Rail	5,185	5,224	(1)	7,256	6,694	8	1,399	1,281	9
Intermodal									
Domestic	891	1,028	(13)	738	795	(7)	828	773	7
International	1,274	1,278	-	499	501	-	392	392	-
Other	-	-	-	125	50	150	-	-	-
Total Intermodal	2,165	2,306	(6)	1,362	1,346	1	629	584	8
Total Surface Transportation	7,350	7,530	(2) %	\$ 8,618	\$ 8,040	7 %	\$ 1,173	\$ 1,068	10 %

SURFACE TRANSPORTATION TRAFFIC AND REVENUE

Volume (Thousands); Revenue (Dollars in Millions), Revenue Per Unit (Dollars)

CSX follows a 52/53 week fiscal reporting calendar and 2004 included 53 weeks, with the additional week in the 2004 fourth quarter. In the following discussion, the two periods are compared as if they were of equal duration.

13 Weeks									
	Fourth Quarter Volume			Fourth Quarter Revenue			Fourth Quarter Revenue Per Unit		
	2005	2004	% Change	2005	2004	% Change	2005	2004	% Change
Merchandise									
Phosphates and Fertilizers	99	115	(14) %	\$ 87	\$ 83	5 %	\$ 879	\$ 722	22 %
Metals	88	90	(2)	150	129	16	1,705	1,433	19
Forest Products	106	112	(5)	183	173	6	1,726	1,543	12
Food and Consumer	61	62	(2)	115	99	16	1,885	1,597	18
Agricultural Products	90	88	2	147	129	14	1,633	1,466	11
Chemicals	127	137	(7)	274	266	3	2,157	1,942	11
Emerging Markets	122	128	(5)	124	131	(5)	1,016	1,023	(1)
	693	732	(5)	1,000	1,010	7	1,558	1,380	13
Automotive	125	130	(4)	225	218	3	1,800	1,677	7
Coal, Coke and Iron Ore									
Coal	429	417	3	500	438	14	1,166	1,050	11
Coke and Iron Ore	21	19	11	21	17	24	1,000	895	12
	450	436	3	521	455	15	1,158	1,044	11
Other	-	-	-	27	20	35	-	-	-
Total Rail	1,268	1,298	(2)	1,853	1,703	9	1,461	1,312	11
Intermodal									
Domestic	240	255	(6)	206	208	(1)	858	816	5
International	310	323	(4)	122	126	(3)	394	390	1
Other	-	-	-	38	26	46	-	-	-
Total Intermodal	550	578	(5)	366	360	2	665	625	7
Total Surface Transportation	1,818	1,876	(3) %	\$ 2,219	\$ 2,063	8 %	\$ 1,221	\$ 1,100	11 %

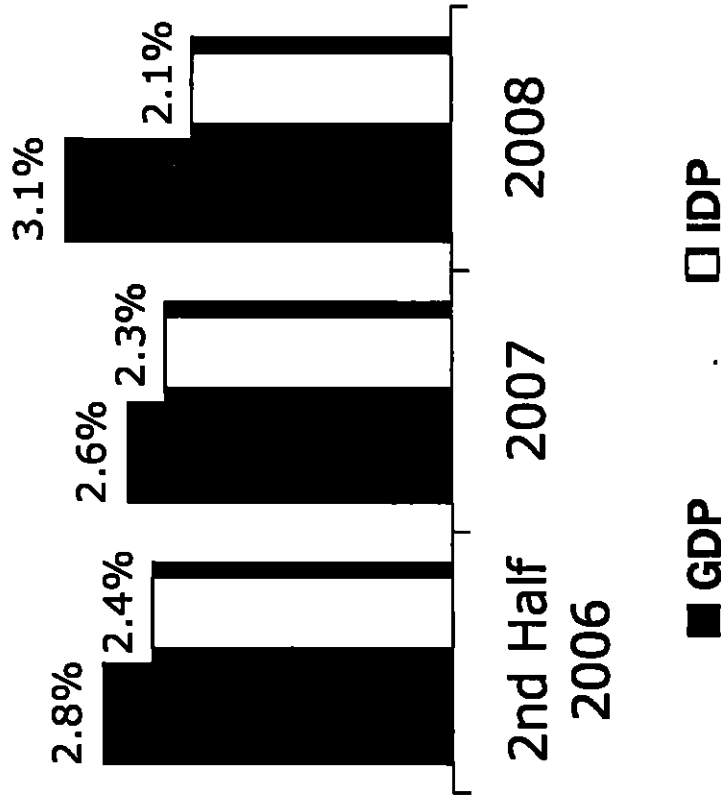
52 Weeks									
	Year Volume			Year Revenue			Year Revenue Per Unit		
	2005	2004	% Change	2005	2004	% Change	2005	2004	% Change
Merchandise									
Phosphates and Fertilizers	444	463	(4) %	\$ 351	\$ 335	5 %	\$ 791	\$ 724	9 %
Metals	361	374	(3)	570	502	14	1,579	1,342	18
Forest Products	439	456	(4)	717	669	7	1,633	1,467	11
Food and Consumer	249	241	3	438	371	18	1,759	1,539	14
Agricultural Products	357	351	2	550	504	9	1,541	1,436	7
Chemicals	533	555	(4)	1,009	1,052	(4)	2,043	1,895	8
Emerging Markets	505	500	1	513	497	3	1,016	994	2
	2,888	2,940	(2)	4,238	3,930	8	1,464	1,337	9
Automotive	488	502	(3)	844	825	2	1,730	1,643	5
Coal, Coke and Iron Ore									
Coal	1,726	1,636	6	1,992	1,692	18	1,154	1,034	12
Coke and Iron Ore	83	70	19	88	65	35	1,060	929	14
	1,809	1,706	6	2,080	1,757	18	1,150	1,030	12
Other	-	-	-	184	84	24	-	-	-
Total Rail	5,185	5,148	1	7,256	6,596	10	1,399	1,281	9
Intermodal									
Domestic	891	1,014	(12)	738	783	(6)	828	772	7
International	1,274	1,261	1	499	494	1	392	392	-
Other	-	-	-	125	50	150	-	-	-
Total Intermodal	2,165	2,275	(5)	1,362	1,327	3	629	583	8
Total Surface Transportation	7,350	7,423	(1) %	\$ 8,618	\$ 7,923	9 %	\$ 1,473	\$ 1,067	10 %

Transportation Marketplace

Overall, transportation demand remains strong putting pressure on available capacity.

- Rail transportation demand is up
 - Driven by strength in:
 - Agriculture
 - Chemicals
 - Coal
 - Metals
 - Imports/Exports
 - Influenced by population shifts
 - GA/FL vs NY/NJ
 - Enhanced by market conditions that favor rail
 - Increasing truck cost structures
 - Highway capacity not keeping pace

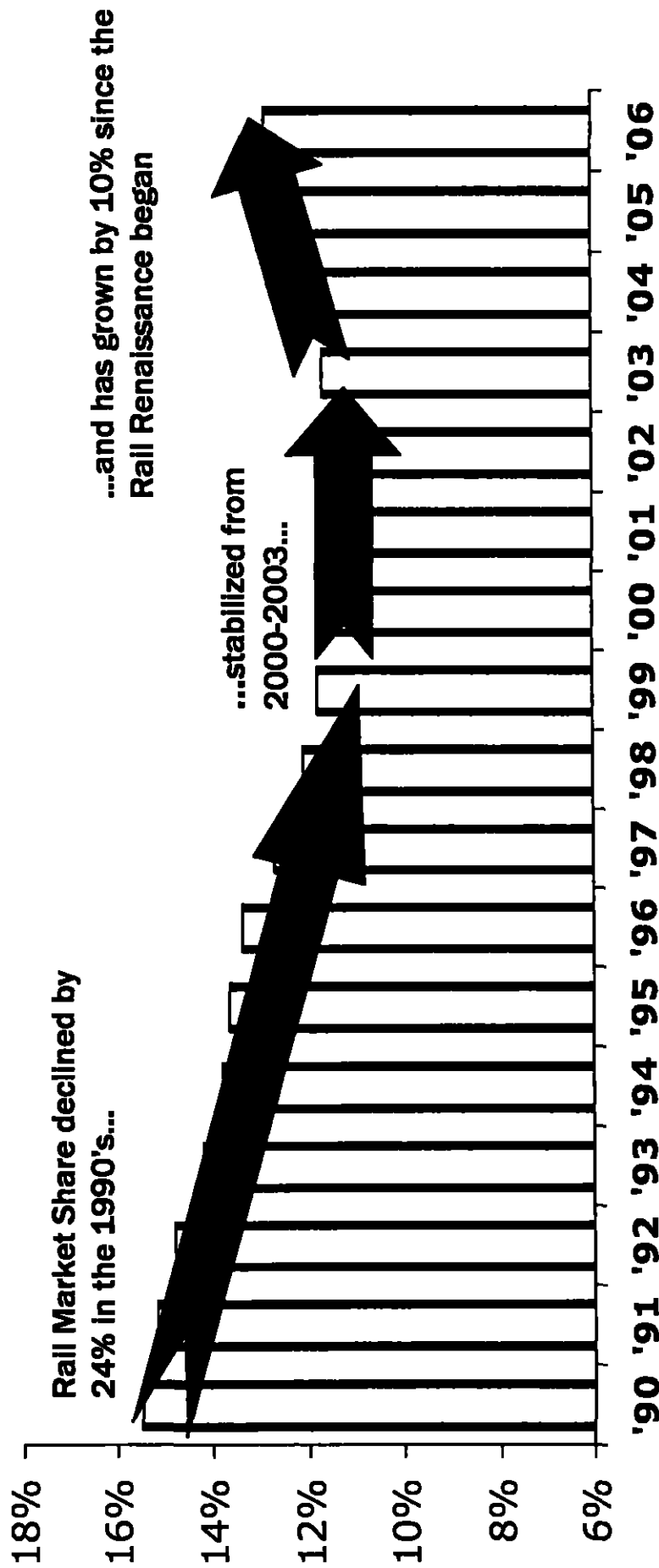
Economic Forecast
2006-2008



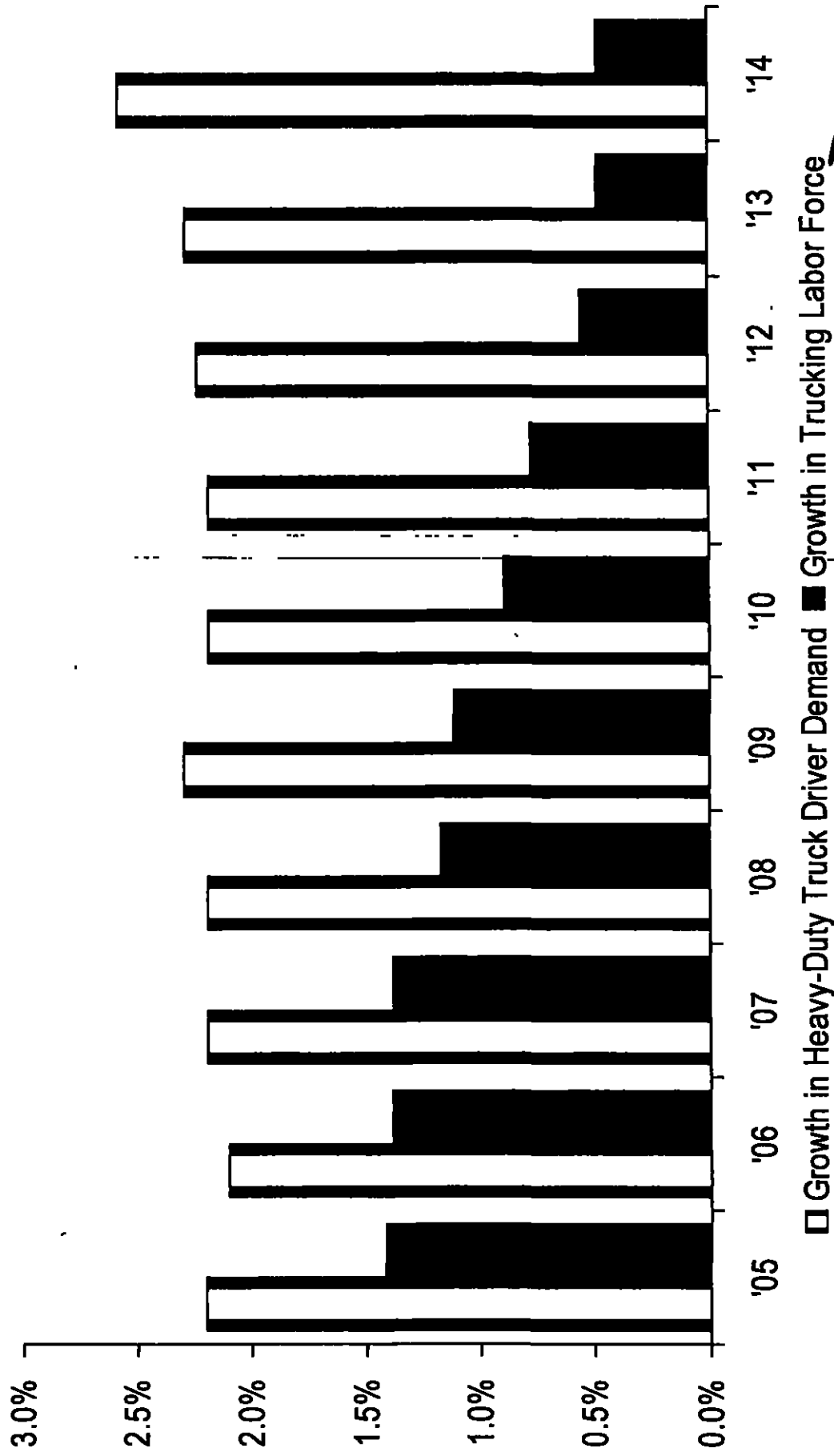
Source: Global Insight

Since 2003, rail market share has grown by 10% driven by lack of capacity in the trucking industry.

Rail Market Share 1990-2006



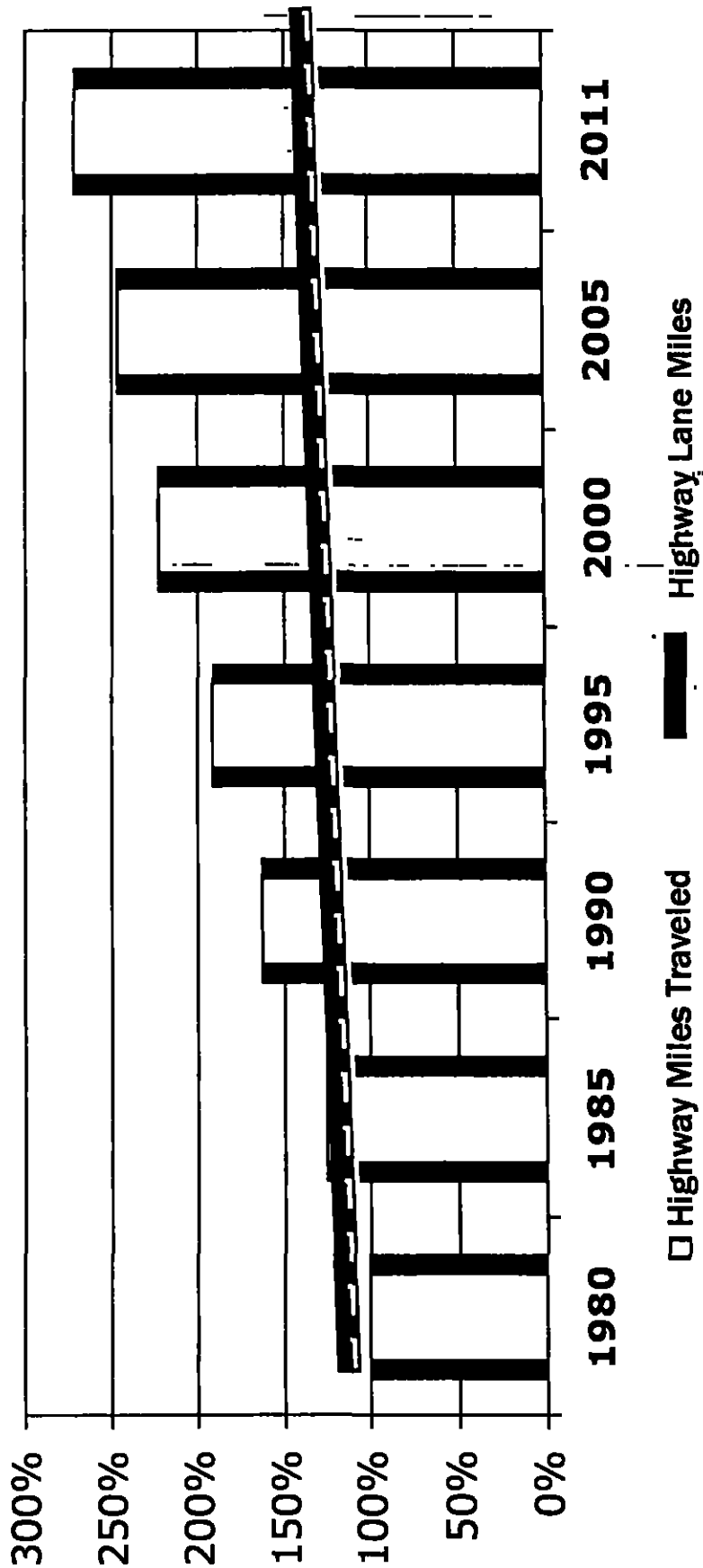
The gap between supply and demand for trucking labor will continue to widen in the coming years.



Source: Global Insights

Highway capacity is tightly constrained

Highway Transportation Environment 1980-2011

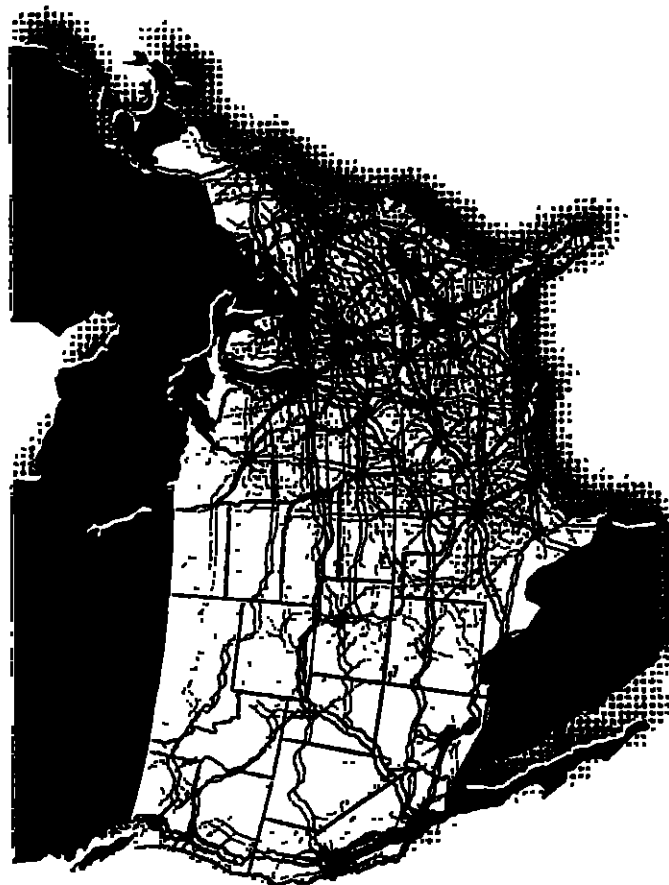


Source: AAR, Department of Transportation

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Highway congestion is projected to get worse creating a more difficult trucking environment.

Today



Future

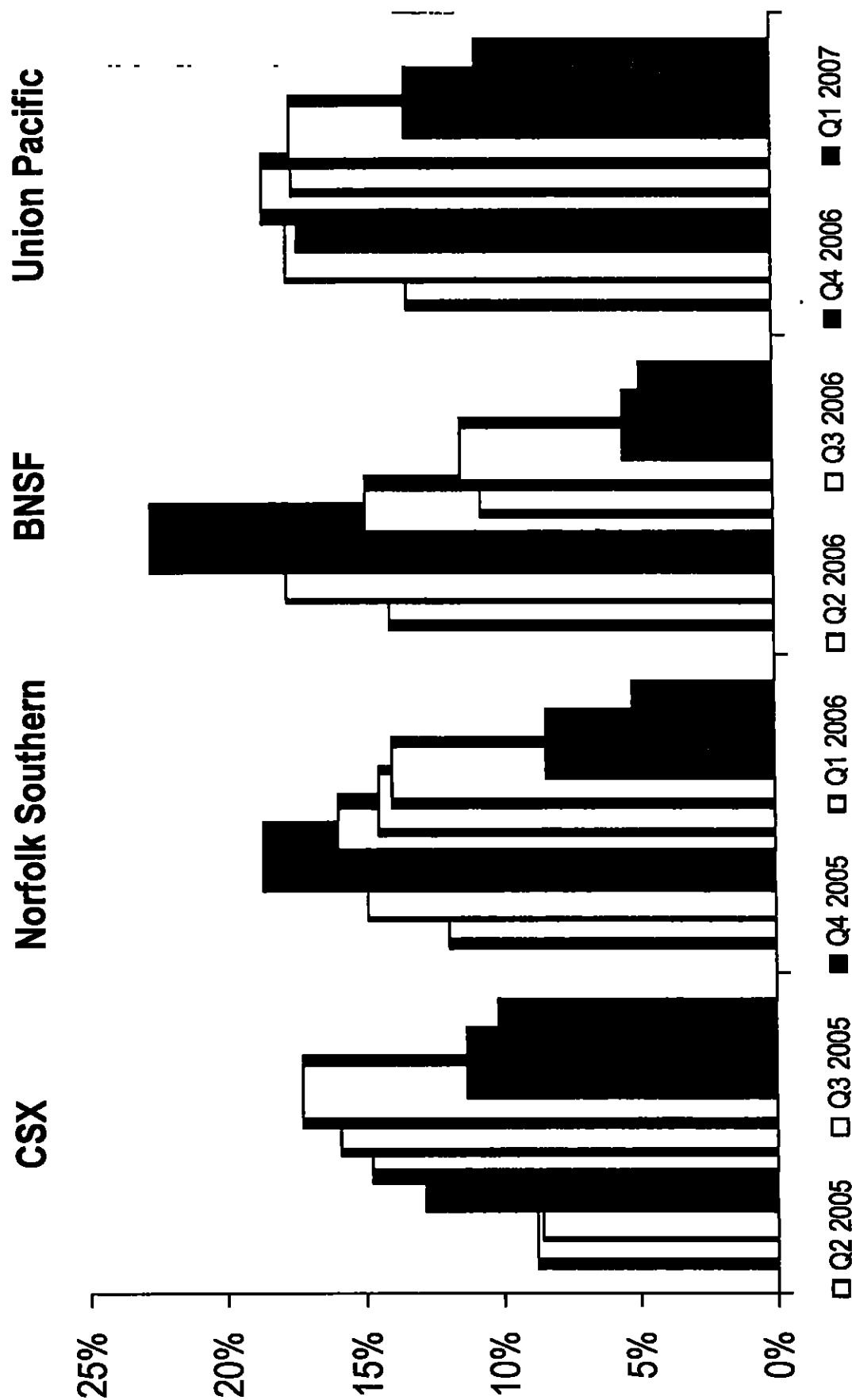


Source: USDOT FHWA Freight Analysis Framework

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Marketplace Impact on Rail Pricing

The rail market for general merchandise pricing has been strong since 2005.



Source: Publicly available quarterly financial reports

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

So what drives our pricing decisions...

- The Market
 - Supply/Demand
 - Capacity
 - Similar type shipments
- Alternative Opportunities
 - Can we move other business
- Complexity of movement
 - Risk

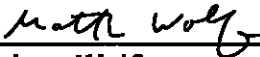
APPENDIX 5

Appendix 5 contains Highly Confidential information subject to a Protective Order issued by the STB in this case, and therefore is not included in this Public filing.

CERTIFICATE OF SERVICE

I hereby certify that, on this 4th day of February, 2008, I served a copy of the foregoing
by courier and by first class mail, postage prepaid on the following

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Matthew Wolfe