SERVICE DATE – SEPTEMBER 27, 2012
UPDATED – DECEMBER 7, 2012

SURFACE TRANSPORTATION BOARD

UPDATED DECISION* – PUBLIC VERSION

Docket No. NOR 42123

M&G POLYMERS USA, LLC
v.
CSX TRANSPORTATION, INC.

Digest:[1] In this proceeding, M&G Polymers USA, LLC (M&G) contends that 42 separate rates charged by CSX Transportation, Inc. (CSXT) for rail transportation are unreasonably high. Before it can evaluate the reasonableness of a particular rail rate, the Surface Transportation Board must find that the carrier has market dominance over the transportation at issue, meaning there is no effective competition from other railroads or other modes of transportation. The Board granted CSXT's unopposed request to bifurcate the case to consider separately the threshold issue of market dominance before considering the reasonableness of the challenged rates.

The Board concludes that CSXT possesses market dominance with respect to 36 of the 42 rates challenged by M&G and lacks market dominance with respect to the other six. Because the decision refines the Board's approach to the analysis of qualitative market dominance, parties are given 30 days to submit comments with respect to this refined approach. No later than 15 days following the end of the comment period, M&G and CSXT shall confer and submit a proposed procedural schedule to govern the rate reasonableness phase of this proceeding.

Decided: September 26, 2012

On June 18, 2010, M&G Polymers USA, LLC (M&G) filed a complaint challenging the reasonableness of various common carrier rail transportation rates established by CSX Transportation, Inc. (CSXT) for the transportation of polyethylene terephthalate (PET)[2] in

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* This updated decision reflects the notice issued December 7, 2012, which added a public version of the appendix. The September 27, 2012 decision previously available on the Board's website remains unchanged in all other respects.

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

[2] PET is a plastic pellet substance that is widely used in many consumer and industrial applications such as plastic bottles, food packaging, and carpet fiber.

carload traffic.[3] The vast majority of the movements at issue either originate or terminate at an M&G production facility or storage/transload facility. M&G alleges that CSXT possesses market dominance over the traffic and requests that maximum reasonable rates be prescribed using the Board's Stand-Alone Cost (SAC) test.

The default procedural schedule in SAC proceedings provides for evidence on market dominance and rate reasonableness to be submitted simultaneously. See Expedited Procedures for Processing Rail Rate Reasonableness, Exemption & Revocation Proceedings, 1 S.T.B. 754, 760 (1996). However, in response to an unopposed motion, here we bifurcated this proceeding into separate market dominance and rate reasonableness phases, directed the parties to confine their initial submissions to the issue of market dominance, and held the rate reasonableness phase of this proceeding in abeyance pending review of the parties' market dominance evidence. M&G Polymers USA, LLC v. CSX Transp., Inc., NOR 42123, slip op. at 3-4 (STB served May 6, 2011).

The Board's market dominance inquiry seeks to determine whether there is "effective competition from other carriers or modes of transportation for the transportation to which a rate applies." 49 U.S.C. § 10707(a). This inquiry is comprised of two components, the first of which is quantitative. The statute establishes a conclusive presumption that a railroad does not have market dominance if the rate charged produces revenues that are less than 180% of its variable costs[4] of providing the service. Id. § 10707(d)(1)(A). If this quantitative threshold is met, the Board moves to the second component, a qualitative analysis. Wis. Power & Light Co. v. Union Pac. R.R., 5 S.T.B. 955, 960-61 (2001). In this analysis, the Board determines whether there are any feasible transportation alternatives that are sufficient to constrain the railroad's rates to competitive levels, considering both intramodal competition—competition from other railroads—and intermodal competition—competition from other modes of transportation such as trucks, transload arrangements, barges, or pipelines. E.I. du Pont de Nemours & Co. v. CSX Transp., Inc. (DuPont I), NOR 42099, slip op. at 2 (STB served June 30, 2008). Even where feasible transportation alternatives are shown to exist, those alternatives may not provide "effective competition." See Mkt. Dominance Determinations & Consideration of Prod. Competition (Mkt. Dominance Determinations), 365 I.C.C. 118, 129 (1981) ("Effective competition for a firm providing a good or service means that there must be pressures on that firm to perform up to standards and at reasonable prices, or lose desirable business.").

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[3] CSXT provides transportation in single-line service for 18 of the 42 rates at issue. With regard to the other 24 rates, CSXT operates in joint-line service with one or more other railroads. While both parties identify these categories with "A-_" and "B-_" designations, respectively, we will identify these categories with the alternative "SL-_" (for single-line) and "J-_" (for joint-line) designations (e.g., SL-1 rather than A-1, J-1 rather than B-1, etc.).

[4] Variable costs are those railroad costs which vary with the level of output. The comparison of revenues to variable costs, reflected as a percentage figure, is known as a revenue-to-variable cost (R/VC) ratio.

Market dominance is a complicated issue to resolve in this case. On the one hand, the movement origins and/or destinations (including M&G's production facilities) can be served via rail only by CSXT. However, the product at issue in this case is a plastic pellet substance which physically can be transported via truck or rail, demonstrated most obviously by the fact that M&G transports annually a not insignificant amount of PET via truck or truck/rail combination. It is not enough, however, for truck or truck/rail service to compete to some extent with CSXT rail service. As M&G correctly observes, at some point even a monopolist could price its services so high that even patently ridiculous transportation alternatives would eventually serve to constrain rates. Rather, the central issue in determining market dominance in this case is whether truck or truck/rail alternatives function as "effective" constraints on CSXT's pricing—i.e., whether they constitute competition sufficient to deter CSXT from charging monopoly prices for the transportation of M&G's PET.

There is a compelling need for an objective approach to resolving this issue given the rapidly escalating complexity of the market dominance inquiry in rate cases. Over the last two decades, rate cases were brought almost exclusively by utilities challenging rates for the transportation of large coal volumes. Truck or truck/rail alternatives are rarely a feasible alternative to direct rail service in such cases. Thus, the typical pattern in past rate cases has been either that (1) defendant railroads concede market dominance or (2) the questions relating to market dominance were relatively straightforward and easy to resolve. For several years now, however, the Board has been striving to make its rate review process more broadly available to shippers other than large utilities. These efforts are starting to bear fruit—as witnessed by our growing rate docket and the more frequent use of our simplified rate procedures. But many of these new cases—involving challenges to dozens, if not hundreds, of transportation rates—raise complex market dominance issues. Without some more objective means of resolving these issues quickly, the market dominance inquiry will soon dwarf the rate reasonableness inquiry. The delay witnessed in this proceeding—due in no small part to the thousands of pages of testimony submitted by the parties—will become commonplace and will deter future litigants from bringing genuine rate disputes to the agency for resolution.

Neither party has offered a satisfactory approach to resolving this central issue here. Therefore, we have developed a methodology specifically designed to gauge objectively whether feasible direct truck or truck/rail transload alternatives are effectively constraining CSXT's pricing.[5] The three components of this methodology, described in greater detail below, are as follows. First, we calculate the "limit price," i.e., the highest price CSXT theoretically could

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[5] While we acknowledge that prior Board decisions have used the term "feasibility" differently, in this opinion we use the term to describe the concept of "practical feasibility"—i.e., whether an alternative is possible from a practical standpoint given real-world constraints. Determining whether or not such an alternative is effectively constraining the rate at issue is a distinct inquiry premised on the assumption that the alternative is practically feasible.

charge M&G without causing a significant amount of the issue traffic on a particular rail movement to be diverted to any particular competitive alternative. Second, we calculate the "limit price R/VC ratio" by comparing the limit price to CSXT's variable costs of providing the service at issue. We then compare CSXT's most recent Revenue Shortfall Allocation Method (RSAM) figure—the measure of the average markup that CSXT would need to collect from all of its potentially captive traffic to earn a return on investment equal to the cost of capital—to the limit price R/VC ratio.[6] If the limit price R/VC ratio exceeds CSXT's most recent RSAM figure, we preliminarily conclude that the alternative cannot exert competitive pressure sufficient to effectively constrain the rate at issue. If the limit price R/VC ratio falls below the RSAM figure, we preliminarily conclude that the competitive alternative effectively constrains the rate at issue. Finally, our preliminary conclusion could, in certain circumstances, be overcome by evidence demonstrating that the alternative upon which the limit price is based has certain intangible qualities that bear on the alternative's ability to effectively constrain the rate at issue.

We believe this approach offers a sufficiently reliable indicator of whether a particular feasible alternative represents competition adequate to constrain the carrier's rates effectively. Moreover, the approach provides objective guidance in gauging whether or not a particular feasible alternative is effectively constraining the carrier's pricing. For example, if a feasible alternative prevents the railroad from charging rates above 190% of variable costs, it would appear that the marketplace is capable of disciplining the carrier's behavior. In contrast, if that same alternative serves only to prevent the railroad from charging rates above 500% of variable costs, then it is equally clear to us that the marketplace is not placing sufficient discipline on the carrier's behavior and that Congress would have intended for the Board to investigate the reasonableness of those rates. Employing an objective methodology based on RSAM ensures that our market dominance analysis balances the revenue needs of the carrier with the need to protect captive shippers from the abuse of market power. While prior decisions addressing the issue of market dominance have considered whether feasible alternatives were effectively constraining carrier pricing, see, e.g., McCarty Farms v. Burlington N., Inc. (McCarty Farms), 3 I.C.C.2d 822, 827-32 (1987), we believe that development of a more objective methodology will help to better guide our inquiries in this respect.

In the end, we conclude that CSXT possesses market dominance over 36 of the 42 rates challenged by M&G. However, given that our decision refines the Board's approach to the analysis of qualitative market dominance, we are providing parties 30 days to submit comments with respect to this refined approach. This is not our standard practice, but an opportunity we

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[6] The Board has previously indicated that the fact that a particular rate produces an R/VC ratio which falls below the carrier's RSAM number indicates that competitive transportation alternatives likely exist and are exerting downward pressure on the rate governing that traffic. See Simplified Standards for Rail Rate Cases (Simplified Standards), EP 646 (Sub-No. 1), slip op. at 81 (STB served Sept. 5, 2007) (suggesting that a rate that falls below RSAM is "being constrained by...market forces").

believe is prudent here. We believe that this refined approach to the qualitative market dominance inquiry represents a reasoned and practical way of resolving the central issue in this case. If there is a better general approach to this issue, if there is a superior benchmark that can be used to guide this inquiry, or if the application of the refined approach to the facts of this case is somehow flawed, parties are strongly encouraged to use this comment period to bring such concerns to our attention. We urge parties to keep in mind that "[a]t the core of the 'effective competition' standard is the idea that there are competitive, market pressures on the railroads deterring them from charging monopoly prices for transporting goods," McCarty Farms, 3 I.C.C.2d at 832 (quoting Ariz. Pub. Serv. Co. v. United States (Ariz. Pub. Serv.), 742 F.2d 644, 650-51 (D.C. Cir. 1984)), and that what we seek to develop is an objective approach that can be used to readily resolve the central market dominance inquiry—i.e., whether a feasible alternative is providing "effective competition" to the transportation at issue.

BACKGROUND

M&G filed its initial complaint on June 18, 2010, challenging the reasonableness of rates charged by CSXT for the transportation of PET between 69 origin and destination pairs, alleging that CSXT possesses market dominance over the traffic, and requesting that maximum reasonable rates be prescribed using the Board's full SAC test. M&G's initial complaint included Canadian National Railway Co. (CN) as a defendant. In a decision served on July 22, 2010, the Board granted M&G's motion to dismiss its complaint against CN with prejudice. In a decision served on August 4, 2010, a procedural schedule and a protective order were established. On August 16, 2010, M&G filed an amended complaint deleting six lanes from the challenged traffic and adding five more, resulting in a total of 68 origin and destination pairs.

On October 18, 2010, M&G filed a motion for leave to file a second amended complaint, which, among other things, added South Carolina Central Railroad Company (SCRF) as a defendant. On January 27, 2011, M&G filed a motion to dismiss the complaint against SCRF with prejudice, stating that those parties had reached a settlement agreement. On that same date, CSXT filed a motion for expedited determination of jurisdiction over the challenged rates (motion to bifurcate). In its motion to bifurcate, CSXT argued that M&G in the past has utilized trucks for the transportation of PET, and that M&G could feasibly and cost-effectively transport PET via truck and rail-truck alternatives for most of the issue traffic.

On January 31, 2011, M&G filed a third amended complaint, which it corrected on February 1, 2011. The third amended complaint reflected the removal of SCRF as a defendant and added two new lanes of traffic, resulting in a total of 70 origin and destination pairs. In an accompanying letter, M&G explained that this additional traffic was a result of new business and, therefore, was not known when M&G filed its original complaint or any of the subsequent amended complaints.

In a decision served on February 4, 2011, the Board granted M&G's motion to dismiss SCRF. In response to an unopposed motion filed by M&G on January 10, 2011, to modify the

procedural schedule, on February 24, 2011, the Board modified the procedural schedule as requested, thereby postponing each submission by over two months.

On February 11, 2011, CSXT responded to M&G's request to file the third amended complaint, essentially requesting that the Board strike the two new lanes on the basis that late addition of the lanes was prejudicial to CSXT. On February 15, 2011, M&G filed a reply explaining that the new lanes are the result of recently acquired business that M&G did not have when it filed its prior complaints, and arguing that CSXT would not be prejudiced by adding the two new lanes of traffic.

On February 18, 2011, M&G filed a reply in opposition to CSXT's motion to bifurcate. However, on April 15, 2011, M&G withdrew its opposition to the motion to bifurcate and filed a motion to modify the procedural schedule, to which CSXT replied on April 19, 2011.

By a decision served on May 6, 2011, the Board granted CSXT's motion to bifurcate, denied CSXT's request to strike the two new lanes of traffic added by M&G in its third amended complaint, set a procedural schedule for the market dominance phase of this proceeding,[7] and rejected CSXT's request to hold oral argument on the issue of market dominance. The parties made their joint submission of operating characteristics on May 11, 2011, in which they explained that they had reached agreement on all but two of the operating characteristics for each issue movement—"railroad miles" and "tons per car."[8]

On June 7, 2011, one day after it was due, M&G filed its Opening Market Dominance Evidence (Opening Evidence)[9] as well as a motion pursuant to 49 C.F.R. § 1117.1 for leave to late file. That same day, CSXT filed a reply to M&G's motion, in which CSXT indicated no objection to M&G's motion to late file. CSXT subsequently filed its Reply Market Dominance Evidence (Reply Evidence) on July 5, 2011, and M&G filed its Rebuttal Market Dominance Evidence (Rebuttal Evidence) on August 4, 2011.

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[7] The modified procedural schedule provided an additional month for lane-specific discovery by CSXT on the two new lanes added by M&G's third amended complaint.

[8] CSXT subsequently agreed to M&G's "tons per car" calculations. Reply Evidence II-3. The parties' disagreement regarding "railroad miles" will be addressed in what is currently designated the highly confidential appendix that will be initially released only to the parties' outside counsel in conjunction with this decision. As explained more fully below, a public version of that appendix will be forthcoming.

[9] M&G's Opening Evidence indicates that M&G is not pursuing relief with regard to one of the lanes identified in its third amended complaint. Opening Evidence I-1 n.1. Thus, M&G is challenging a total of 69 origin and destination pairs, which are governed by 42 separate CSXT rates.

On September 30, 2011, CSXT filed a motion to strike certain portions of M&G's Rebuttal Evidence. CSXT argues in its motion to strike that M&G's Rebuttal Evidence included the assertion of a new legal theory that directly contradicts positions contained in M&G's Opening Evidence relating to certain intermodal competitive options to CSXT rail service. M&G filed its reply to CSXT's motion on October 14, 2011, arguing that its new evidence and argument responded to issues raised by CSXT in its Reply Evidence and therefore were properly raised on rebuttal.

PRELIMINARY MATTERS

M&G's Motion for Leave to Late File

M&G's unopposed motion for leave to late file its Opening Evidence will be granted, and its Opening Evidence will be accepted for filing and made part of the record in this proceeding.

CSXT's Motion to Strike

Positions of the Parties. In its Rebuttal Evidence, M&G argues for the first time that the Board should not consider the competitiveness of any intermodal alternative to a joint rail movement that does not begin at the origin and terminate at the destination specified by the challenged tariff rate, even if those locations do not represent the movement's initial origin and ultimate destination. According to M&G, Board precedent governing "bottleneck" rate challenges like the instant one specifies that market dominance is to be evaluated solely with respect to the specific origin and destination covered by the bottleneck rate.[10] In other words, according to M&G, DMIR requires that "the Board...only consider market dominance for the movement between the points covered by the challenged CSXT rate."[11] M&G further suggests that the Board "should find that market dominance conclusively exists" on any lane where CSXT has failed to propose an alternative that would replace only CSXT's portion of a joint movement.[12]

CSXT argues in its motion to strike that raising this argument on rebuttal is improper because (1) M&G failed to assert its theory on opening in direct contravention of Board rules specifically limiting rebuttal evidence in SAC rate cases,[13] and (2) M&G's Opening Evidence

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[10] Rebuttal Evidence II-B-3 (citing Minn. Power, Inc. v. Duluth, Missabe & Iron Range Ry. (DMIR), 4 S.T.B. 288, 292 n.13 (1999)).

[11] Id.

[12] Id. at II-B-4. M&G identifies 15 such lanes in its rebuttal. Id. at II-B-4 to II-B-5.

[13] See Gen. Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases (Gen. Procedures), 5 S.T.B. 441, 445-46 (2001) ("Rebuttal presentations are limited to responding to the reply presentation of the opposing party. Rebuttal may not be used as an opportunity to

(continued...)

itself relied on evaluations of potential competitive alternatives that were not limited solely to the origin and destination covered by the challenged bottleneck rates.[14] CSXT further argues that complainants must not be permitted to withhold arguments for rebuttal that could and should have been asserted on opening,[15] and must not be allowed to "bait defendants into accepting and addressing the complainant's positions on opening only to attack those same positions on rebuttal."[16] In CSXT's view, simple fairness and a concern for protecting the integrity of the Board's proceedings dictate that the Board strike the new DMIR-related arguments and evidence presented by M&G for the first time on rebuttal.[17] CSXT asserts that even assuming the correctness of M&G's theory, the DMIR precedent does not apply here because it is distinguishable from the instant case on its facts.[18] Finally, CSXT argues that to the extent dicta from a single footnote in DMIR "suggests that in all cases the Board should ignore evidence of effective competitive options that does not precisely replicate the 'origin' and 'destination' of the defendant rail carrier's section of a joint movement, that dicta should be rejected as inconsistent with" congressional intent.[19]

In its reply to CSXT's motion, M&G states that asserting its DMIR-related theory for the first time on rebuttal is proper because it constitutes allowable responsive argument to evidence presented by CSXT on reply.[20] M&G argues further that its consideration (and subsequent rejection) of certain transportation alternatives on opening that did not comport with its DMIR-related theory does not render its Rebuttal Evidence improper or inconsistent because M&G was simply acting out of an abundance of caution by comparing CSXT's rail transportation to the most efficient alternative transportation options regardless of whether they conformed to M&G's interpretation of DMIR.[21] M&G also contends that CSXT's motion fails to distinguish DMIR on

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introduce new evidence that could and should have been submitted on opening to support the opening submissions. New evidence improperly presented on rebuttal will not be considered.").

[14] CSXT Motion to Strike 4-7.

[15] While not discussed at length, CSXT's motion to strike includes an objection to M&G's introduction of Robert Granatelli's testimony for the first time on rebuttal. CSXT Motion to Strike 2.

[16] Id. at 8.

[17] Id.

[18] Id. at 11-13.

[19] Id. at 13.

[20] M&G Reply to Motion to Strike 1-2.

[21] Id. at 6.

its facts.[22] Finally, M&G asserts that <u>DMIR</u> concerns the Board's subject matter jurisdiction and that, as a result, arguments relating thereto may neither be waived by the parties nor disregarded by the Board.[23]

Board Analysis. We will grant CSXT's motion to strike. Board rules clearly direct complainants to put forth their best and most complete case on opening. Gen. Procedures, 5 S.T.B. at 445-46 (explaining that "the party with the burden of proof on a particular issue must present its entire case-in-chief in its opening evidence."). The shipper must "submit its best, least-cost, fully supported case on opening" and "may not hold back to see the railroad's reply evidence before finalizing or supporting its own case." Duke Energy Corp. v. Norfolk S. Ry. (Duke Energy), 7 S.T.B. 89, 101 (2003). Principles of fairness and the orderly handling of cases require that "parties submit their best evidence on opening, so that each party has a fair opportunity to reply to the other's evidence." Xcel Energy v. BNSF Ry., NOR 42057, slip op. at 2 (STB served Apr. 4, 2003).[24] This principle of fairness would be subverted were the Board to allow M&G to present specific potential transportation alternatives in its Opening Evidence and then urge the Board in its Rebuttal Evidence to preclude consideration of those same alternatives, particularly where (as here) CSXT relied on M&G's initial discussion of those potential alternatives when preparing its Reply Evidence.

In the instant case, M&G includes evidence on opening regarding certain rail-truck and direct truck transportation alternatives in an effort to demonstrate that CSXT possesses market dominance over certain traffic. CSXT counters on reply with evidence in support of its argument that the same alternatives identified by M&G on opening in fact constitute effective constraints on the exercise of market power. M&G then responds on rebuttal that CSXT's reply evidence discussing these very same alternatives may not be considered pursuant to the Board's decision in DMIR, despite M&G's concession that its Opening Evidence relied at least in part on an evaluation of these potential intermodal alternatives as "the most efficient, and thus lowest cost, alternatives."[25]

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[22] Id. at 7-10.

[23] Id. at 10-11.

[24] For these reasons, we are also granting CSXT's motion insofar as it asks us to strike Robert Granatelli's testimony from M&G's Rebuttal Evidence. Mr. Granatelli's testimony could have been presented on opening, particularly given M&G's admission that the testimony "validates" and "confirm[s]" arguments presented in M&G's Opening Evidence. Rebuttal Evidence I-23. As noted above, shippers must "submit [their] best, least-cost, fully supported case on opening" and "may not hold back to see the railroad's reply evidence before finalizing or supporting its own case." Duke Energy, 7 S.T.B. at 101.

[25] M&G Reply to Motion to Strike 6.

The theory advanced by M&G on rebuttal is inconsistent with the positions it adopted on opening. In previous rate cases, the Board has taken action to prevent a complainant from inappropriately altering its opening evidence on rebuttal by asserting arguments that are in direct conflict with those proffered on opening.[26] We believe similar action is required here, and therefore will grant CSXT's motion to strike.[27]

We further conclude that DMIR does not implicate the Board's subject matter jurisdiction. Specifically, M&G argues that because the Board does not have jurisdiction over transportation rates governed by contracts, any competitive alternatives that include a transportation segment governed by a contract rate are beyond the Board's jurisdiction and therefore must be excluded from our analysis.[28] M&G's argument, however, misapprehends both the boundaries of the Board's jurisdiction and the nature of the tools available to the Board when conducting its market dominance analysis. In this context, the Board may consider transportation alternatives involving modes over which the Board has no jurisdiction. For example, even though it lacks jurisdiction to determine the reasonableness of rates for transportation by barge,[29] the Board has considered barge alternatives when considering whether a defendant railroad is market dominant over a particular rail movement.[30] And while 49 U.S.C. § 10709(c) removes "all matters and disputes arising from rail transportation contracts from the Board's jurisdiction,"[31] the Board properly considers freight contract rates when making

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[26] See, e.g., Otter Tail Power Co. v. BNSF Ry., NOR 42071, slip op. at 3-4 (STB served Jan. 27, 2006) (striking rebuttal evidence modifying the shipper's original cost-of-capital calculations because the railroad's reply evidence relied upon the shipper's original calculations and explaining that "a complainant may not...alter its position on rebuttal" in such circumstances); Duke Energy Corp. v. CSX Transp., Inc., NOR 42070, slip op. at 4 (STB served Mar. 25, 2003) (striking rebuttal arguments "in the interest of fairness and orderly handling of the case" where the complainant went "beyond simply seeking to support what it presented in its opening evidence or adopting evidence submitted by" the railroad).

[27] Because we decide CSXT's motion to strike on this basis, we need not address the issue of whether DMIR is distinguishable on its facts from the instant case. Likewise, we need not address the questions of whether DMIR correctly applied the principles set forth in Market Dominance Determinations—Product & Geographic Competition, 3 S.T.B. 937 (1998), and, even if it did correctly apply those principles, whether DMIR should be overruled.

[28] M&G Reply to Motion to Strike 10-11.

[29] The Board's predecessor agency, the Interstate Commerce Commission, licensed water carriers until that authority was repealed in the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995).

[30] See, e.g., E.I. du Pont de Nemours & Co. v. CSX Transp., Inc., NOR 42100, slip op. at 4-5 (STB served June 30, 2008).

determinations in contexts involving rail transportation over which the Board possesses jurisdiction.[32]

DISCUSSION AND CONCLUSIONS

The Board may consider the reasonableness of a challenged rail rate only if the defendant carrier has market dominance over the traffic. 49 U.S.C. § 10707. Market dominance is defined as "an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies." Id. § 10707(a). "At the core of the 'effective competition' standard is the idea that there are competitive, market pressures on the railroads deterring them from charging monopoly prices for transporting goods." McCarty Farms, 3 I.C.C.2d at 832 (quoting Ariz. Pub. Serv., 742 F.2d at 650-51). Therefore, in rate cases the Board looks to see if there are any alternatives sufficiently competitive (whether singly or in combination) to bring market discipline to the carrier's pricing—i.e., whether there is effective competition adequate to restrain rates at or below a maximum reasonable level. Id. at 825, 831.

The Board's market dominance inquiry is comprised of two distinct parts. First, for quantitative market dominance, there is a conclusive presumption that a railroad does not have market dominance if the charged rate produces revenues that are less than 180% of its variable costs of providing the service. 49 U.S.C. § 10707(d)(1)(A).[33] In contrast, if the charged rate produces revenues that are greater than 180% of variable cost, the Board can draw no opposite presumption that the rail carrier has market dominance over such transportation. Id. § 10707(d)(2). Rather, it must instead move to the second part—referred to as the "qualitative market dominance" inquiry—in which the Board then examines whether there are any feasible transportation alternatives for the issue traffic that are sufficient to constrain the railroad's rates to competitive levels, considering both intramodal competition—competition from other railroads—and intermodal competition—competition from other modes of transportation such as trucks, transload arrangements, barges, and/or pipelines. E.g., DuPont I, slip op. at 2.

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[31] Rail Transp. Contracts Under 49 U.S.C. 10709, EP 676, slip op. at 2 (STB served Jan. 22, 2010).

[32] For example, if a complainant challenged a common carrier rate established by Carrier 1 governing transportation from point A to point B, and there was evidence that Carrier 2 provided a transportation alternative from point A to point B under a rail transportation contract, the Board clearly would consider this transportation alternative for market dominance purposes (notwithstanding the fact that review of the reasonableness of the rate governing the alternative rail transportation would fall outside our jurisdiction).

[33] In this case, the parties agree that CSXT's R/VC ratios exceed the 180% threshold for all the challenged rates. See Opening Evidence I-4 to I-5; Reply Evidence I-13.

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Whether certain transportation alternatives are sufficiently competitive to bring market discipline to the carrier's pricing—i.e., whether feasible alternatives constitute competition sufficient to deter the carrier from charging monopoly prices—is a complicated issue to resolve. The preliminary step is to determine the feasibility of any theoretical transportation alternatives that could be used for the issue traffic (considering both intramodal and intermodal alternatives). Within this rubric the Board considers many factors, including, for example, whether and to what extent such alternatives might involve potentially prohibitive transport distances, product integrity concerns, capacity/infrastructure constraints, and the presence of any transportation requirements imposed by the complaining shipper's customers. If an alternative is not feasible, it cannot bring market discipline to a carrier's pricing adequate to restrain rates effectively.

Once the Board determines that a feasible transportation alternative exists, we move to the next step in assessing market dominance. This agency has long recognized that even when there is a feasible alternative mode or modes of transportation, a complainant can establish market dominance by demonstrating that the alternative mode or modes are not <u>effectively</u> constraining the carrier's ability to increase the rates on the issue traffic. See <u>Mkt. Dominance Determinations</u>, 365 I.C.C. at 129 ("Effective competition for a firm providing a good or service means that there must be pressures on that firm to perform up to standards and at reasonable prices, or lose desirable business."). Again, as M&G correctly observes,[34] at some point even a monopolist could price its services so high that even patently ridiculous transportation alternatives would eventually serve to constrain rates. <u>See, e.g.</u>, <u>Ariz. Pub. Serv.</u>, 742 F.2d at 651; <u>DuPont I</u>, slip op. at 7-8.

Resolving the question of whether feasible alternatives exert effective competitive pressure on CSXT's pricing is the central issue in this case. While there is no direct rail-to-rail competition at issue here, PET is capable of being transported by truck or a truck/rail combination. M&G challenges the feasibility of those truck and truck/rail alternatives by arguing that customer requirements/preferences, product integrity issues, and capacity constraints at its Apple Grove production facility[35] render these alternatives infeasible. In response to M&G's feasibility arguments, CSXT argues that a study commissioned by M&G in 2009 that sought to identify alternatives for the transportation of PET establishes that truck and truck/rail alternatives represent feasible alternatives that provide effective competition. As explained more fully in the highly confidential appendix, we conclude that this study provides

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[34] Opening Evidence I-13.

[35] Typically, capacity/infrastructure constraints involving the shipper's facilities are one factor we consider in the course of our market dominance inquiry. As explained more fully in the highly confidential appendix, however, we conclude that asserted capacity constraints at M&G's Apple Grove facility do not alter our conclusions regarding market dominance in this case. We will continue to consider issues relating to alleged capacity/infrastructure constraints in appropriate cases.

some evidence that product integrity concerns do not render alternatives involving a truck/rail combination infeasible. And as we further conclude in the highly confidential appendix, feasible truck or truck/rail alternatives to CSXT's service exist for most of the challenged movements. This is demonstrated most obviously by the fact that a not insignificant portion of M&G's PET shipments from 2006-2010 were transported via truck or a truck/rail combination.[36] Therefore, we must decide whether such alternatives are economically effective—i.e., whether they represent competition sufficient to restrain rates effectively.

We are not satisfied with the approach urged by either party to determine whether the proposed alternatives represent competition sufficient to restrain rates effectively. CSXT simply compares the price of the alternative to the challenged rate. If the two figures are similar, CSXT declares that effective competition exists and the case should be dismissed as to that rate.[37] However, the mere fact that a rail carrier prices its services right at the threshold where, if slightly higher, it might begin to lose traffic to an alternative does not indicate whether that alternative is constraining rates effectively.

M&G, however, would compare the variable costs of providing the challenged rail service to an estimate of the variable costs of providing the alternative service,[38] an approach we believe is equally flawed. Putting aside the tremendous empirical difficulties of estimating the variable costs associated with a potential service alternative, this figure does not represent a constraint on a railroad's pricing. A carrier is constrained by the market price charged by its competitors for an alternative transportation service, not the variable costs incurred by those competitors when providing the alternative service.

Accordingly, described below is the approach we will use in this case to gauge whether a feasible alternative is functioning as an effective constraint on CSXT's pricing, followed by an explanation of our rationale for using it in this case. First, for each challenged rate we will calculate the price that, if the railroad charged above that level, would result in a significant loss of traffic. This "limit price" figure is a gauge of the highest price a carrier could theoretically charge a shipper without causing a significant amount of the issue traffic on a particular rail movement to be diverted to a competitive alternative, assuming all other factors are held constant. The method by which we calculate the limit price is as follows. With respect to an alternative that replaces the entire movement (in the context of transportation provided in single-line service) or just CSXT's portion of a joint-line movement, the limit price is calculated as the price of the transportation alternative to that CSXT service. With respect to an alternative that replaces the entire movement (in the context of transportation provided in joint-line service)—

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[36] The precise percentage of M&G's PET shipments that moved via truck or a truck/rail combination is discussed in the highly confidential appendix.

[37] Reply Evidence II-38 to II-41.

[38] Opening Evidence, Exhibit II-B-23.

i.e., an alternative that replaces both CSXT's portion and the portion of the movement provided by one or more connecting carriers—the limit price is calculated according to the following formula: LP = ALT – (THRU – SEG), where "ALT" represents the price of the alternative service from origin to ultimate destination, "THRU" represents the through rate applicable to the entire movement that includes the challenged tariff rate, and "SEG" represents the tariff rate applicable to the challenged CSXT portion of the movement.

Second, we then will compare this limit price to the railroad's variable costs of providing the service at issue. We will refer to the ratio of the limit price over variable costs as the "limit price R/VC ratio." If the limit price R/VC ratio exceeds CSXT's most recent RSAM figure,[39] we will preliminarily conclude that the alternative cannot exert competitive pressure sufficient to constrain rates effectively. If, in contrast, the limit price R/VC ratio falls below this RSAM figure, we will preliminarily conclude that the competitive alternative effectively constrains the rate at issue. The further the limit price R/VC ratio is above or below the RSAM figure, the stronger the preliminary conclusion that the alternative is either effectively constraining or not effectively constraining the rate governing the issue traffic.[40]

Finally, when appropriate, we will consider whether the alternative has any intangible features sufficient to overcome the applicable preliminary conclusion. For example, if an otherwise uncompetitive alternative provides certain unquantifiable benefits to the shipper, or the challenged rail transportation involves certain unquantifiable costs, we might find that an alternative with a limit price R/VC ratio above the RSAM figure nonetheless effectively exerts market pressure on the railroad sufficient to deter it from charging monopoly prices. Alternatively, if an otherwise competitive alternative involves certain unquantifiable costs to the shipper, or the challenged rail transportation provides certain unquantifiable benefits, we might find that an alternative with a limit price R/VC ratio below the RSAM figure nonetheless does not place effective market pressure on the railroad.

The overall approach to evaluating potential transportation alternatives in this case—i.e., a threshold feasibility analysis, a comparison of the limit price to the defendant's variable costs of providing the service at issue, and a consideration of intangible features—encompasses the same factors described by the market dominance guidelines originally set forth in Market

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[39] CSXT's current RSAM figure—covering the most recent 4-year period for which data are available—is 293%. See Simplified Standards for Rail Rate Cases—2010 RSAM and R/VC$_{>180}$ Calculations, EP 689 (Sub-No. 3), slip op. at 3 (STB served Feb. 27, 2012). If no published RSAM figure for the defendant carrier were available, use of a regional or national average might be appropriate.

[40] In situations involving multiple proposed alternatives, we have utilized only the lowest priced feasible alternative—i.e., the feasible alternative with the lowest limit price and therefore the lowest limit price R/VC ratio—in our comparison with the carrier's RSAM figure.

<u>Dominance Determinations & Consideration of Product Competition</u>, 365 I.C.C. at 132-33, and cited by the parties.[41] Again, while prior decisions addressing the issue of market dominance have considered whether feasible alternatives were effectively constraining carrier pricing, <u>see, e.g.</u>, <u>McCarty Farms</u>, 3 I.C.C.2d at 827-32, we believe that development of a more objective methodology will help to better guide our inquiries in this respect.

Moreover, we believe this comparative approach offers a sufficiently reliable indicator of whether effective competition exists for several reasons. As an initial matter, a carrier's RSAM figure is a measure of the average markup that the carrier would need to collect from all of its potentially captive traffic (i.e., all traffic priced at or above the 180% R/VC level) in order to earn adequate revenues as measured by the Board under 49 U.S.C. § 10704(a)(2) (i.e., earn a return on investment equal to the cost of capital). <u>2010 Tax Info. for Use in the Revenue Shortfall Allocation Method</u>, EP 682 (Sub-No. 2), slip op. at 1 (STB served July 8, 2011). Furthermore, the RSAM methodology "takes into account the key economic and equity principles embodied in the Interstate Commerce Act. It provides for differential pricing and a railroad's need to earn adequate revenues by directly linking its 'revenue need shortfall' to a benchmark markup for captive traffic." <u>Rate Guidelines—Non-Coal Proceedings</u>, EP 347 (Sub-No. 2), slip op. at 4 (ICC served Nov. 16, 1992) (footnote omitted). While the RSAM number standing alone simply represents the system-wide average markup required to achieve revenue adequacy, the Board has explained that "[h]ow a particular carrier's revenue requirements can and should be allocated within its traffic base—i.e., the proper markup to be applied to individual traffic components—is affected by such factors as the mix of competitive and captive traffic handled by that carrier[and] the degree of competition that it faces on its competitive traffic." <u>Rate Guidelines—Non-Coal Proceedings</u>, 1 S.T.B. 1004, 1033-34 (1996). Moreover, "because the average derived by the RSAM is the average for captive shippers only…the ratios for some captive shippers must be above and some below that figure." <u>BNSF Ry. v. STB</u>, 453 F.3d 473, 481 (D.C. Cir. 2006). As a carrier's RSAM number represents the average level at which the carrier would achieve system-wide revenue adequacy, the fact that a rate involving certain potentially captive traffic produces an R/VC ratio that falls below the carrier's RSAM number indicates that competitive transportation alternatives likely exist and are exerting downward pressure on the rate governing that traffic.[42] Likewise, the fact that a rate involving other potentially captive traffic produces an R/VC ratio that falls above the carrier's RSAM number is a useful indicator that competitive transportation alternatives—whether intermodal or intramodal—do not exist and are not effectively constraining the rate charged by the carrier for that traffic.

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[41] <u>See</u> Opening Evidence I-5 to I-6; Reply Evidence II-9.

[42] <u>See</u> <u>Simplified Standards</u>, slip op. at 81 (suggesting that a rate that falls below RSAM is "being constrained by…market forces").

Thus, comparing the limit price R/VC ratio for a given movement to the carrier's RSAM number will indicate either the presence or absence of effective competition for that movement. The limit price R/VC ratio expresses the limit price figure as a percentage of the movement's variable costs.[43] Effective competition likely exists if the highest price the carrier theoretically could charge to move that potentially captive traffic falls below the average point at which the carrier could achieve revenue adequacy.[44] Likewise, if the highest price the carrier theoretically could charge to move the potentially captive traffic falls above the average point at which the carrier could achieve revenue adequacy, effective competition for that movement may not exist.

We believe use of this metric to gauge the effectiveness of potential competitive alternatives is appropriate in light of past Board statements that the "rates that would be charged by a competing mode [of transportation] are relevant to an evaluation of whether that mode provides effective intermodal competition" to the movement at issue. Ariz. Pub. Serv. Co. v. Atchison, Topeka & Santa Fe Ry., 2 S.T.B. 367, 375 n.15 (1997).[45] Furthermore, while the Board's qualitative market dominance guidelines "contemplate the use of" considerations such as the capacity, reliability, speed, and safety of potential transportation alternatives, "they do not exclude the application of quantitative analysis as well." CF Indus., Inc. v. STB, 255 F.3d 816, 822 (D.C. Cir. 2001) (citing Mkt. Dominance Determinations, 365 I.C.C. at 119 n.5).

We are aware that 49 U.S.C. § 10707(d)(2) precludes us from establishing market dominance and rate reasonableness presumptions based solely on the fact that the R/VC ratio associated with the issue traffic is equal to or greater than 180%. We are likewise aware that the Board has in the past expressed a reluctance to rely on the actual R/VC ratio, standing alone, to demonstrate a carrier's exercise of market dominance over a particular movement.[46] We believe,

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[43] In other words, the limit price R/VC ratio differs from the typical R/VC ratio in that the former utilizes the postulated limit price in the numerator while the latter utilizes the actual revenue generated by a particular tariff rate in the numerator.

[44] See Simplified Standards, slip op. at 81.

[45] See also Salt River Project Agric. Improvement & Power Dist. v. United States, 762 F.2d 1053, 1060 (D.C. Cir. 1985); Ariz. Pub. Serv., 742 F.2d at 650 ("The [ICC's] guidelines state that evidence of effective competition may include 'the transportation costs of the rail and motor carrier alternatives.'") (quoting Mkt. Dominance Determinations, 365 I.C.C. at 133).

[46] See Potomac Elec. Power Co. v. CSX Transp., Inc., 2 S.T.B. 290, 294 (1997) ("Apart from the 180% jurisdictional threshold, which has been set by law, we do not use rate-cost relationships as a basis for qualitative market dominance determinations."); Mkt. Dominance Determinations, 365 I.C.C. at 122 (questioning whether actual R/VC ratios "reliably indicate the presence or absence of market dominance" because there "are any number of reasons why a high price/cost ratio may not be indicative of true market power on the part of the railroad"). See generally Laurits R. Christensen Associates, Inc., A Study of Competition in the U.S. Freight

however, that a focus on the limit price R/VC ratio—and its comparison to the carrier's RSAM number—does not implicate § 10707(d)(2)'s statutory directive or the concerns previously expressed by the Board. In contrast to an analysis of the actual R/VC ratio governing a particular movement, which does not tell us whether the rate upon which that R/VC ratio is based "will actually move traffic over an extended period of time,"[47] the limit price R/VC ratio is intended to capture the price point at which the carrier would retain the issue traffic even in a competitive market.

As the Board has previously observed, a high R/VC ratio "by itself does not indicate market dominance," but when "that data is supported by other evidence it may serve to support a finding" on the competitive effectiveness of transportation alternatives. McCarty Farms, 3 I.C.C.2d at 832. At the core of the limit price analysis is an effort to determine whether the proposed alternatives are sufficient to deter the railroad from charging monopoly prices for the transportation of goods, but "the mere existence of some alternative does not in itself constrain the railroads from charging rates far in excess of the just and reasonable rates that Congress thought the existence of competitive pressures would ensure." Ariz. Pub. Serv., 742 F.2d at 651. However, a finding that the limit price R/VC ratio generated by the limit price of a given transportation alternative falls above RSAM—again, a measure of the average markup that the railroad would need to collect from all of its potentially captive traffic to be considered revenue adequate—provides an objective indication of monopoly pricing.

We believe this refined approach to market dominance provides objective guidance in gauging whether or not a particular feasible alternative is effectively constraining the railroad's pricing. For example, if a feasible alternative prevents the railroad from charging rates above 190% of variable costs, it would appear that the marketplace is capable of disciplining the carrier's behavior. In contrast, if that same alternative serves only to prevent the railroad from charging rates above 500% of variable costs, then it is equally clear to us that the marketplace is not placing sufficient discipline on the carrier's behavior and that Congress would have intended for the Board to investigate the reasonableness of those rates. Employing an objective methodology based on RSAM is intended to ensure that our market dominance analysis balances the revenue needs of the carrier with the need to protect captive shippers from the abuse of market power.


(continued...)
Railroad Industry and Analysis of Proposals That Might Enhance Competition—Revised Final Report at ES-12 to ES-20 (Nov. 2009) (in independent study of competition in U.S. freight railroad market commissioned by the Board, noting relative weakness of R/VC ratio as indicator of market power abuse), available at http://www.stb.dot.gov/stb/elibrary/CompetitionStudy.html.

[47] Mkt. Dominance Determinations, 365 I.C.C. at 122.

The notion of comparing the price of transportation alternatives to the defendant carrier's variable costs of providing the challenged service reflects a hybrid of the approaches advocated by the parties, although the idea to then compare that ratio to the RSAM figure was not advocated or addressed by either M&G or CSXT. Accordingly, we are providing parties 30 days to submit comments with respect to the refinements to our qualitative market dominance test set forth above, and we strongly encourage them to do so.

Hypothetical illustrations. To aid the parties and the public, we will provide two hypothetical examples demonstrating how the rate-specific analyses are structured in this case.

Hypothetical 1
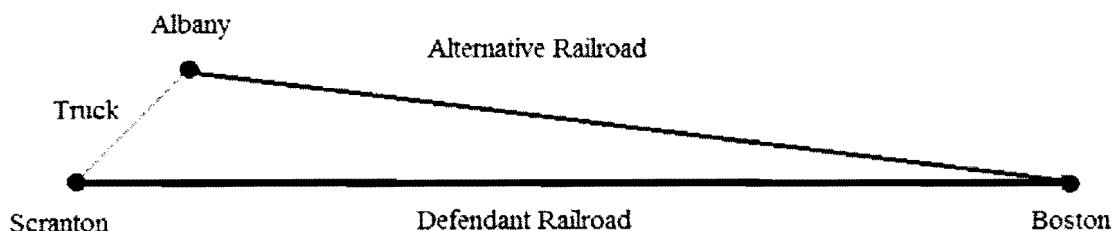
Assume that a hypothetical shipper challenges the rate charged by Defendant Railroad for single-line movements of a hypothetical commodity from Scranton to Boston. The hypothetical tariff rate is $4,500 for a service generating $1,200 in variable costs, resulting in an R/VC ratio of 375%. Defendant Railroad proposes a feasible truck/rail transload alternative—in which the shipment is trucked from Scranton to Albany and then transloaded onto railcars for delivery to Boston by a different railroad—with a combined price (and therefore a limit price) of $5,100, which generates a limit price R/VC ratio of 425%. Given that Defendant Railroad's most recent hypothetical RSAM figure is 311%, the limit price R/VC ratio would fall significantly above that figure, and we would therefore preliminarily conclude that the alternative does not exert competitive pressure sufficient to restrain Defendant Railroad's Scranton-Boston rate effectively and that Defendant Railroad is market dominant with respect to this rate. We would then proceed to consider whether the alternative has intangible features sufficient to overcome this preliminary conclusion.

Hypothetical 2
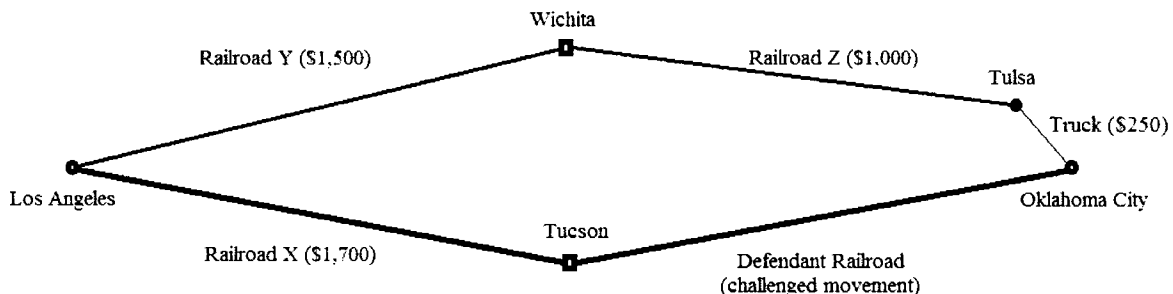
In a more complicated example, assume that the hypothetical shipper challenges Defendant Railroad's rate for movements of a hypothetical commodity from an interchange point at Tucson to Oklahoma City, previous to which the shipment moved from Los Angeles to Tucson under a separate tariff or contract with hypothetical railroad X. The hypothetical tariff rate charged by Defendant Railroad is $1,500 for a service generating $500 in variable costs to Defendant Railroad (resulting in an R/VC ratio of 300%), while the hypothetical rate charged by hypothetical railroad X is $1,700 (for a total through rate of $3,200). Defendant Railroad proposes a feasible truck/rail transload alternative that would move via rail on hypothetical railroad Y from Los Angeles to Wichita, then via rail on hypothetical railroad Z to Tulsa where it would be transloaded onto trucks for delivery to Oklahoma City. The combined price of the proposed alternative transportation is $2,750. Calculating the limit price, however, requires us to back out the Defendant Railroad's portion of the through rate. The limit price Defendant Railroad could charge on its portion of the through rate without losing traffic to the hypothetical railroad Y/hypothetical railroad Z/truck alternative thus would be $1,050, which would generate a limit price R/VC ratio of 210%. Given that Defendant Railroad's most recent RSAM figure is 311%, the limit price R/VC ratio would fall significantly below that figure, and we would therefore preliminarily conclude that the alternative does exert competitive pressure sufficient to restrain Defendant Railroad's Tucson-Oklahoma City rate effectively and that Defendant Railroad is not market dominant with respect to this rate. We would then proceed to consider whether the alternative has intangible features sufficient to overcome this preliminary conclusion.

Application to this case. In the qualitative market dominance inquiry, the complainant bears the burden of establishing the absence of effective competition from other rail carriers or modes of transportation for the traffic to which the challenged rate applies.[48] The parties agree

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[48] See 49 U.S.C. § 10707. See also CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc., 3 S.T.B. 196, 266 (1998); Gov't of the Territory of Guam v. Sea-Land Serv., Inc., WCC 101, slip op. at 5-6 (STB served Feb. 2, 2007) ("In rail cases,

(continued...)

that no direct intramodal competition exists with respect to any of the challenged rates.[49] M&G demonstrates in its Opening Evidence, and CSXT effectively concedes on reply, that no effective intermodal competition exists with regard to 18 of the rates challenged by M&G (which apply to a total of 26 separate lanes).[50] The parties disagree on whether effective intermodal competition exists with regard to the other 24 challenged rates (which apply to a total of 43 separate lanes).

The majority of the evidence submitted by the parties in this case—relating primarily to the presence or absence of effective competitive alternatives for the challenged rates—was filed under seal and is competitively sensitive. Pursuant to our protective order, this information has been shared only with outside counsel and experts; the marketing employees of neither M&G nor CSXT have been allowed to access this information for any purpose. In light of the prevalence of competitively sensitive information in this case, our analysis of the record in the highly confidential appendix is initially being provided only to the parties' outside counsel. Given the importance of guiding party conduct in future cases and educating the public, however, we will

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(continued...)
because a finding of market dominance is a threshold jurisdictional requirement, we place the burden of proof on the shipper to show that there is not effective competition.").

[49] See Opening Evidence I-6; Reply Evidence II-9 (explaining that "CSXT does not contest M&G's argument that there is no direct rail-to-rail intramodal competition between the origin and destinations of the issue movements" because "CSXT is the only rail carrier providing rail service to M&G's Apple Grove facility" and for "issue movements not originating or terminating at Apple Grove, CSXT is the sole rail carrier providing rail service to the origin, destination, or both").

[50] See Opening Evidence II-B-58 to II-B-129; Reply Evidence I-3 (indicating that CSXT was submitting "evidence showing that CSXT does not possess market dominance over the transportation in [only] forty-three of the lanes at issue," thereby effectively conceding market dominance with respect to the remaining 26 lanes). The following 18 separate rates govern the 26 uncontested lanes: Apple Grove-Bordentown, Apple Grove-Cartersville, Apple Grove-East St. Louis, Apple Grove-Florence, Apple Grove-Memphis, Apple Grove-Orlando, Apple Grove-Paris, Apple Grove-Prattville, Apple Grove-Rains, Apple Grove-Toledo, Belpre-Bordentown, Belpre-Cartersville, Belpre-East St. Louis, Belpre-Orlando, Belpre-Paris, Belpre-Toledo, East St. Louis-Apple Grove, and Rains-Cartersville. Despite the fact that CSXT has introduced no market dominance evidence regarding the Belpre-Lenexa and the Belpre-Sweetwater lanes, which are governed by the Belpre-Chicago rate, CSXT has submitted market dominance evidence regarding the Belpre-Aguila lane, which is also governed by the Belpre-Chicago rate. Thus, while we include Belpre-Chicago in the category of contested rates, our market dominance analysis of that rate will only include consideration of intermodal alternatives with regard to the Belpre-Aguila movement for purposes of determining whether the Belpre-Chicago rate is being constrained effectively.

release a public version of this appendix after M&G and CSXT have been given the opportunity to propose redactions of any confidential and highly confidential information contained therein.

Based upon the refined approach described above, we conclude that CSXT lacks market dominance over the following six rates: Apple Grove-Columbus, Apple Grove-Lynchburg, Belpre-Columbus, New Orleans-Clifton Forge, New Orleans-Orlando, and Apple Grove-Clifton Forge. Most of these rates have a limit price R/VC ratio that falls below CSXT's RSAM figure and have no intangible features that might otherwise suggest market dominance. In contrast, we conclude that CSXT has market dominance over the remaining rates, many of which have limit price R/VC ratios above CSXT's RSAM figure, and for which we believe there are no other factors which demonstrate that the alternatives, even if feasible, are placing competitive pressure on CSXT adequate to restrain rates effectively. Given that our decision refines the Board's approach to the analysis of qualitative market dominance, we are providing parties 30 days to submit comments with respect to the refined approach. No later than 15 days after the end of the comment period, M&G and CSXT shall confer and submit a proposed procedural schedule to govern the rate reasonableness phase of this proceeding. Furthermore, no later than 15 days after the end of the comment period, M&G and CSXT each shall prepare and submit a version of the highly confidential appendix that specifically identifies proposed redactions of any confidential and highly confidential information contained therein.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1.   M&G's motion for leave to late file is granted.

2.   CSXT's motion to strike is granted.

3.   Parties shall have 30 days to file comments with respect to the refined approach to qualitative market dominance set forth in the body of the decision. No later than 15 days after the end of the comment period, M&G and CSXT shall confer and submit a proposed procedural schedule to govern the rate reasonableness phase of this proceeding. No later than 15 days after the end of the comment period, M&G and CSXT each shall prepare and submit a version of the highly confidential appendix that specifically identifies proposed redactions of any confidential and highly confidential information contained therein.

4.   This decision is effective on the date of service.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

PUBLIC APPENDIX

PRELIMINARY ISSUES

Calculation of Variable Costs

As noted in the decision, the parties have reached agreement as to eight of the Uniform Railroad Costing System (URCS) inputs used to calculate the variable costs—and the attendant R/VC ratio—associated with each of the issue movements.[51] The parties continue to disagree about the proper method for calculating "railroad miles," at least insofar as certain lanes are concerned. In its Rebuttal Evidence, M&G accepts CSXT's mileage calculations for all but 13 of the lanes at issue in this proceeding.[52] However, CSXT has effectively conceded that it possesses market dominance over eight of the 13 lanes identified by M&G.[53] Thus, the parties' dispute with regard to "railroad miles" is limited to five lanes, governed by the following four rates: Apple Grove-Rochester, Apple Grove-Clifton Forge, Apple Grove-Columbus, and Apple Grove-Belpre.

The basic dispute between the parties on this issue can be summarized as follows. M&G argues that the presence of significant variations in route miles for identical origin and destination pairs contained in CSXT's car event database—variations that M&G claims are the result of misroutes, errors, or data anomalies—necessitate the use of a "predominant route" approach—i.e., selection of the routing most commonly used by CSXT for each origin and destination pair and CSXT's portion of each joint movement.[54] CSXT counters that the most reliable and representative approach is to use a weighted average of mileages for all of the M&G movements between each origin and destination pair, an approach that reflects the relative frequency of each routing.[55]

We agree with CSXT's weighted average approach to calculating "railroad miles" in this case because such an approach is more consistent with real-world operations than M&G's predominant route approach. This is particularly true given that (a) M&G's shipments move in carload traffic rather than unit trains, and (b) CSXT uses a dynamic network.[56] Thus, particular circumstances and network demands may make it more efficient for M&G's traffic to be moved via one route at one time and over other routes at other times, and it makes little sense to exclude certain routes from our mileage calculations because one route may be used slightly less often than another. See FMC Wyo. Corp. v. Union Pac. R.R., 4 S.T.B. 699, 748-49 (2000).

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[51] See supra p. 6 and note 8.

[52] Rebuttal Evidence II-A-4.

[53] See supra p. 20 and note 50.

[54] Opening Evidence II-A-2 to II-A-4 and Exhibit II-A-7.

[55] Reply Evidence II-2 to II-7.

[56] See id. at II-4.

Calculation of Tariff Rates and Fuel Surcharges

M&G and CSXT have submitted tariff rates and assessed fuel surcharges that differ in minor respects.[57] Neither party has offered an explanation for the differences. We adopt CSXT's rate and fuel surcharge figures for purposes of our market dominance analysis because doing so is more consistent with our use of CSXT's other data. Given that we have adopted CSXT's mileage and variable cost calculations, we believe that use of CSXT's rate and fuel surcharge data will avoid the possibility of inappropriate comparisons. All data will be normalized to 1Q2011.

GENERAL ISSUES

Customer Requirements

M&G claims that its customers require and/or strongly prefer delivery by rail, thereby rendering other transportation alternatives infeasible. M&G makes a variety of arguments in support of this assertion. First, it argues that a customer preference for rail delivery of PET can be discerned from the fact that M&G has delivered no more than ▉ of all PET shipments in the U.S. and Canada by truck in any year from 2006-2010, and from the fact that this statistic drops to ▉▉▉ considering only customers with a choice between rail and truck.[58] Second, M&G contends that PET supply contracts with a number of its customers "expressly require rail delivery," thereby rendering delivery by truck infeasible.[59] Third, M&G asserts that both it and most of its customers store PET inventory in privately-owned railcars, rendering bulk PET shipment by truck generally cost-prohibitive.[60] M&G explains this point by stating that construction and maintenance of storage silos at its production facilities makes little sense given the high volumes of PET that already move by rail, while the fact that most of M&G's customers maintain little on-site PET storage capacity prevents them from receiving significant volumes by truck because trucks—in contrast to railcars—"cannot be used for storage...and...must be unloaded immediately upon delivery."[61] Fourth, M&G claims that the facilities of and infrastructure around certain "high-volume" customers cannot accommodate additional truck

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[57] Opening Evidence, Exhibit II-A-5; Reply Evidence, Exhibit II-B-3.

[58] Opening Evidence II-B-20 (citing DuPont I, slip op. at 7; McCarty Farms, 3 I.C.C.2d at 829).

[59] Id. at II-B-21 (citing E.I. du Pont de Nemours & Co. v. CSX Transp., Inc. (DuPont III), NOR 42101, slip op. at 6 (STB served June 30, 2008)).

[60] Id. at II-B-23.

[61] Id. at II-B-23 to II-B-24.

traffic, rendering PET delivery by truck infeasible for these customers.[62] Finally, M&G maintains that the inability of its consignment customers—i.e., customers that are not billed for a particular shipment of PET until the shipment is unloaded at the point of delivery—to use trucks for PET storage renders such alternative transportation methods infeasible.[63]

CSXT responds to M&G's "customer requirement" arguments as follows. First, CSXT asserts that M&G's evidence regarding alleged customer preference for rail transportation rests on the flawed assumption that customer preferences are "rigid, static, and completely unaffected by market forces."[64] ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮ ▮▮▮▮▮▮▮, CSXT asserts that any customer preference for rail delivery simply amounts to a preference for what is perceived to be the lowest-cost option.[65] Second, CSXT claims that M&G's evidence regarding express requirements present in various supply contracts is lacking because (a) most of the customers who allegedly require rail deliveries in their contracts in fact have received significant volumes of PET by truck; (b) two of the five documents to which M&G refers in this context are not in fact binding contracts; (c) four of these documents specifically refer to the possibility of delivery by truck; and (d) all but one of them were set to expire around ▮▮▮▮▮▮▮▮▮, in any event.[66] Third, CSXT argues that M&G has produced no direct evidence to support the theory that its customers require rail delivery because they lack silo space and therefore need railcars in order to fulfill their post-delivery storage needs.[67] Fourth, CSXT maintains that none of M&G's customers are truly "high-volume," given that (a) shifting all of the PET requirements of the highest-volume lane at issue from railcars to trucks would require only a total of 37 trucks per week, and (b) most other lanes would require on average only three trucks per week if the entire volume currently transported were shifted from rail to truck.[68] Finally, CSXT counters M&G's argument regarding ▮▮▮▮▮▮▮▮▮▮▮ ▮▮

On rebuttal, M&G argues that CSXT is wrong to suggest that the historical data reflects customer preference for lower rates rather than customer preference based on advantages

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[62] Id. at II-B-25.

[63] Id. at II-B-26.

[64] Reply Evidence II-46.

[65] Id. at II-47.

[66] Id. at II-50 to II-51.

[67] Id. at II-51.

[68] Id. at II-53.

[69] Id. at II-52.

inherent in delivery by rail.[70] M&G reiterates its contention that the inherent advantages of delivery by rail—e.g., the ability of the customer to use the railcar for storage of PET, lower handling and administrative costs associated with rail delivery, and the avoidance of product integrity concerns—are the primary drivers of customer decisions regarding the preferred mode for transportation of PET.[71] M&G further contends that the documents it submitted on opening are legally enforceable as contracts even though they are unsigned.[72] M&G also asserts that references to truck deliveries in contracts that purportedly require delivery by rail reflect provision for the emergency truck shipments that customers occasionally require on an expedited basis, or refer to delivery at customer locations not served by rail in instances where the contract covers delivery to multiple customer locations.[73] M&G maintains that its ability to renegotiate expiring contracts has no impact on customer preferences, and that its failure to accommodate such preferences when negotiating new contracts will result in the loss of customers.[74] M&G's rebuttal acknowledges that it has not provided evidence of customer-specific on-site storage capacity, but contends it has presented "ample evidence" regarding general industry practice and the need of the typical customer for railcar storage.[75] ███████████████████████████████

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█████████████████████ Finally, M&G disputes CSXT's contention that M&G has no true "high-volume" customers, explaining that CSXT's evidence on this point ignores the higher costs associated with truck delivery to "high-volume" customers.[77]

We agree with CSXT that the evidence presented by M&G regarding customer preferences/requirements is insufficient to demonstrate that delivery of PET by truck to M&G's customers is infeasible. For purposes of determining whether a direct truck option is generally feasible, the fact that significant volumes of PET shipped from M&G to its customers via truck is particularly relevant. From 2006 to 2010, M&G made ████ shipments of PET by truck.[78]

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[70] Rebuttal Evidence II-B-54.

[71] Id. at II-B-67 to II-B-68.

[72] Id. at II-B-58.

[73] Id.

[74] Id. at II-B-59.

[75] Id. at II-B-60 to II-B-62.

[76] Id. at II-B-62 to II-B-63.

[77] Id. at II-B-63 to II-B-65.

[78] Reply Evidence II-14. Of this total, ████ occurred over the lanes at issue in this case. Id.

M&G thus shipped a weekly average of ███████████ of PET during this time period—many of which originated at M&G's Apple Grove facility, where M&G regularly transloads PET from railcars to trucks for delivery to M&G's customers. For example, in 2010, M&G conducted over ████████████████████ at Apple Grove, for an average of more than ████████ per workday.[79] Such statistics belie M&G's assertion that overwhelming customer preference for delivery of PET by rail renders delivery by truck infeasible. M&G's evidence that it delivered no more than ███ of all PET shipments in the U.S. and Canada by truck in any year from 2006-2010, and no more than ███████ considering only customers with a choice between rail and truck,[80] is likewise insufficient to demonstrate that overwhelming customer preference for delivery of PET by rail renders delivery by truck infeasible. See Amstar Corp. v. Atchison, Topeka & Santa Fe Ry., ICC Docket No. 37478, slip op. at 7 (ICC served Dec. 8, 1987) (concluding that the fact that complainants had shipped 98.5% of the issue movements by rail failed to demonstrate that effective competition did not exist). Even assuming arguendo that the figures cited by M&G indicate an objectively small market share for movement of PET by truck, one cannot conclude that low market share necessarily implies that movement of PET by trucks is infeasible. See Platnick Bros. v. Norfolk & W. Ry., 367 I.C.C. 782, 786 (1983) (holding that trucks could provide effective competition to rail service for iron shipments even if trucks had not been widely used over the issue route).

M&G cites DuPont I for the proposition that "[c]ustomer preference for rail transportation demonstrates the infeasibility of alternative modes."[81] The decision in that case, however, does not stand for the blanket proposition that customer preference for a particular mode of transportation standing alone necessarily renders other potential modes infeasible. Indeed, "customer preference" was but one of many factors which led the Board to conclude that trucking did not provide effective competition for the relevant movement in that case. DuPont I, slip op. at 7-8. Moreover, the conclusion regarding "customer preference" in DuPont I was predicated on direct evidence regarding the unusually sensitive physical characteristics of the issue commodity, id. at 6, as well as "the lack of specialty equipment needed for carriage of synthetic powder plastics by truck," id. at 7. The customer in DuPont I "preferred" delivery by rail because the particular characteristics of that commodity presented significant logistical complications for purposes of potential delivery by truck. Id. at 6. M&G has presented no similar direct evidence here.

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[79] Id.

[80] The fact that M&G regularly supplies PET to customers whose transportation options are limited to motor carriage is a strong indicator that truck delivery as a general matter is not infeasible.

[81] Opening Evidence II-B-20 (citing DuPont I, slip op. at 7).

Further, M&G cites <u>McCarty Farms</u> for the proposition that the "'needs of the shipper or receiver' may determine" the feasibility of proposed alternatives.[82] While this statement is true and indeed reflects a valid concern, the <u>McCarty Farms</u> decision properly focused on customer "needs" rather than subjective preferences when considering the feasibility of proposed alternatives. Evidence of such customer need is lacking here. None of the documents submitted by M&G specifically require delivery of PET by rail in all or virtually all circumstances,[83] and M&G has submitted no direct evidence to support its theory that its customers require rail delivery because they lack silo space and therefore need railcars to accommodate their post-delivery storage needs.[84] Thus, M&G's citation to <u>DuPont III</u> for the proposition that a "contractual requirement to deliver product 'by rail makes a switch to trucks highly infeasible from an economic standpoint due to the risk of losing [the] customer or incurring breach-of-contract liability'"[85] is inapposite. Moreover, even assuming that certain M&G customers lack on-site silo space, M&G has submitted no evidence to support its claim that trucks can never be used for storage.

Finally, while we acknowledge that the infrastructure surrounding certain high-volume customers might pose insurmountable impediments to delivery by truck under certain circumstances, we conclude that none of the movements at issue in this case involve shipments of a magnitude significant enough to justify such a conclusion here. For example, the contested movement with the highest carload volume is [REDACTED], over which M&G ships an

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[82] <u>Id.</u> (citing <u>McCarty Farms</u>, 3 I.C.C.2d at 829).

[83] [REDACTED]

[84] On rebuttal, M&G relies heavily on the testimony of a new witness, Robert Granatelli, to establish a basis for its claim that customer use of railcars for on-site storage is standard practice in the polymer industry. <u>See, e.g.,</u> Rebuttal Evidence II-B-61. However, as explained above, <u>supra</u> note 24, we are granting CSXT's motion to strike Mr. Granatelli's testimony and all references thereto contained in M&G's Rebuttal Evidence.

[85] Opening Evidence II-B-21 (quoting <u>DuPont III</u>, slip op. at 6).

annual average of 644 railcars of PET.[86] As CSXT notes, shifting this entire volume from railcar to truck would translate to only 37 trucks per week.[87] And ███████████████ is by far the highest volume movement. Shifting the entire volume of most of the other contested movements from railcar to truck would involve an average of only three trucks per week.[88] This falls far below volume levels the Board has deemed infeasible in the past. See, e.g., W. Tex. Utils. v. Burlington N. R.R., 1 S.T.B. 638, 652 (1996) (concluding that trucking alternative was not an option because it would have required an additional 200 truck shipments daily).

As a result, we conclude that the evidence presented by M&G regarding customer preferences/requirements is insufficient to demonstrate that delivery of PET by truck to M&G's customers is infeasible as a general matter.

Product Integrity

With respect to the issue of product integrity, M&G notes that each transfer of PET degrades its quality.[89] The product integrity concerns associated with transloading PET primarily take two forms: (1) contamination from dirt and moisture, and (2) the level of dust, "fines," and "streamers" that result.[90] As to the latter of these concerns, each transfer is performed with a vacuum pneumatic system, which uses pressurized air to blow the product from one container into another.[91] In effect, as the sharp edges of the PET pellets collide with one another and the internal sides of the conveying tube, PET dust and small particles called "fines" are created. In addition, the deposits of dust and "fines" on the inside wall of the conveying tube eventually peel away to create "streamers" or long strings of PET in the product mix.[92] The existence of "fines" and "streamers," along with the degradation of product shape and size, create quality control issues for M&G's customers.

M&G acknowledges that contamination from dirt and moisture can be reduced by using transload facilities that are paved and covered against the elements, and that contamination from prior shipments in the same truck can be mitigated by cleaning the trucks regularly.[93] As to product integrity concerns associated with the force of the pneumatic system, M&G notes that

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[86] Id., Exhibit II-B-5.

[87] Reply Evidence II-53.

[88] Id.

[89] Opening Evidence II-B-27.

[90] Id.

[91] Id.

[92] Id. at II-B-27 to II-B-28.

[93] Id. at II-B-27.

these effects can be mitigated with slower transfer velocities and smooth conveying lines, which "usually keep the amount within acceptable limits for most of M&G's truck customers."[94] M&G states that nonetheless, "the most effective mitigation is to minimize the number of transfers."[95] Accordingly, M&G purportedly avoids any transportation alternative that requires more than a single transload.[96] M&G cannot directly load trucks at its Apple Grove facility.[97] If M&G wishes to transport PET from Apple Grove via truck, it must directly load the PET into a railcar before transloading it from the railcar into trucks.[98] Therefore, for movements originating at Apple Grove, M&G asserts that any transload into trucks at that location "constitutes the one and only acceptable transload."[99]

In reply, CSXT argues that M&G's product integrity concerns do not withstand scrutiny. ██ Moreover, CSXT contends that "every truck that is loaded at Apple Grove using its vacuum pneumatic apparatus will be unloaded using that same apparatus."[101] CSXT argues that every truck shipment out of Apple Grove will necessarily require two transloads whether the product is unloaded into a customer silo or a railcar, and that M&G has failed to provide any evidence that having a truck unload into a railcar presents any greater product integrity concerns than unloading the same truck into a customer silo.[102] CSXT notes that product integrity concerns are "not an insuperable problem, but rather a fact of life in

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[94] Id. at II-B-30.

[95] Id.

[96] Id. at II-B-31.

[97] Id.

[98] Id. Despite this fact, for purposes of this decision we define "direct truck" alternatives as those in which shipments of PET depart from Apple Grove in trucks and are delivered directly to the customer, unless specifically noted otherwise. We define "transloading" alternatives as those in which shipments of PET depart from Apple Grove in trucks but are subsequently transloaded into railcars prior to ultimate customer delivery, as well as those in which shipments of PET depart from Apple Grove in railcars but are subsequently transloaded into trucks prior to ultimate customer delivery, unless specifically noted otherwise.

[99] Id.

[100] Reply Evidence II-54. For purposes of this decision, we define "double transload" alternatives as those which involve two separate transloads prior to arriving at the movement's destination, including those in which the first transload (from railcar to truck) occurs at Apple Grove.

[101] Id. at II-56 to II-57.

[102] Id. at II-57.

the plastic polymers industry that can be substantially mitigated by following certain basic procedures to minimize the dust, fines, and streamers that can develop when PET is transloaded improperly."[103] According to CSXT, it is standard practice for shippers to advise motor carriers as to the acceptable range of pressures to use in the pneumatic process to transfer PET pellets. Such an approach reduces the adverse effects caused by the speed of the transfer and the heat generated during the process.[104] CSXT argues that product integrity concerns can be further mitigated by ensuring that the hoses between the truck and the railcar or silo are relatively straight to avoid collisions between the walls and the PET pellets which otherwise lead to breaks and abrasions.[105]

On rebuttal, M&G states that it does not "double transload" in the ordinary course of business.[106] M&G notes that either CSXT has misinterpreted its internal correspondence or the instances in question addressed an emergency situation or involved the return of product for recycling where product degradation is not an issue.[107] M&G believes that "CSXT is missing an obvious point: every shipment, whether via rail or truck, must be unloaded at some point; there is no ability for M&G to avoid unloading."[108] M&G contends that its definition of a "transload" in referencing only one transload per shipment refers to discretionary transfers and that M&G cannot avoid unloading, which it does not consider a discretionary transfer.[109] M&G further argues that CSXT is mistaken to equate unloading a truck into a railcar with unloading a railcar into the customer's facility, as the former necessarily requires an additional transload.[110]

Though it is clear that there will always be a certain amount of product degradation when PET pellets are transferred from a railcar to a truck, we conclude that direct trucking of PET does represent a generally feasible alternative under most circumstances. While the parties agree on little in this case, they both agree that the adverse effects of transloading the product to and from a truck can be mitigated.[111] As M&G itself admits, "trucks are necessary to serve destinations that do not have rail access," "trucks are needed for expedited and emergency shipments," "trucks are used to serve small volume customers," and "trucks can be used to supply customers

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[103] Id. at II-58.

[104] Id. at II-60.

[105] Id.

[106] Rebuttal Evidence II-B-78.

[107] Id. at II-B-78 to II-B-79.

[108] Id. at II-B-80.

[109] Id.

[110] Id.

[111] See Opening Evidence II-B-27 to II-B-30; Reply Evidence II-53 to II-60.

within approximately 200 miles of the supplier, because the short distance makes trucks more cost competitive with rail and mitigates the customer's inventory concerns."[112] As CSXT notes, M&G used trucks for ███ shipments of PET between 2006 and 2010.[113] While the economic effectiveness of a transportation alternative that employs a truck option can be debated, there is ample evidence in the record that movement of PET pellets via truck is feasible.

Unlike direct truck alternatives, CSXT's proposed double transload alternatives in which the product is trucked from Apple Grove to a facility with access to a carrier other than CSXT, and then transloaded into railcars for ultimate delivery to the customer, presents a closer call. It is clear from the record that M&G does not "double transload" PET in the normal course of its business. As M&G notes, CSXT identifies only a single instance where M&G suggested double transloading to a customer.[114] Notwithstanding the fact that M&G does not double transload

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[112] Rebuttal Evidence I-11. Accordingly, this case is not on par with the DuPont I case cited by the shipper. See Rebuttal Evidence II-B-83 to II-B-84. In contrast to that case, where the Board concluded that there was "a high risk of contamination when plasticizers are shipped by truck," DuPont I, slip op. at 5, here we have evidence from the parties that such risks can be mitigated. Also in contrast to that case, where the Board concluded that trucking was used "only when CSXT cannot deliver the product in as timely a fashion as the customer demands," id. at 7, here we have M&G's own admissions that they utilize truck shipments in various other circumstances. M&G's use of trucking to service distinct PET markets—including small and non-rail customers—and to mitigate customer inventory concerns are factors that distinguish the circumstances of this case from those present in the cases cited by M&G where the Board found trucking to be a unique and non-representative service and therefore just a stopgap or emergency measure. See Rebuttal Evidence II-B-83 to II-B-84 (citing various cases). The present case is likewise inapposite to Amstar Corp. v. Alabama Great Southern Railroad, ICC Docket No. 38239S (ICC served Dec. 2, 1987). The ICC noted there that "motor carriers generally are used for greater distances only in extraordinary circumstances, i.e., to serve customers of small volumes, those not located on rail sidings, and those with emergency needs." Id. at 8. However, this discussion was included specifically to support the observation that the higher costs of trucking in that case had contributed to the limited use of that intermodal alternative, and was not intended as an overall assessment of the alternative's feasibility. Id. at 8-9. The decision subsequently concluded that a direct trucking alternative was not "sufficiently realistic to constrain effectively defendants' pricing" because "so little of [the issue] traffic currently moves by truck or can reasonably be expected to move by truck." Id. at 9. In contrast to the circumstances present in that case, M&G ships PET in trucks on a regular basis.

[113] Reply Evidence II-14.

[114] Rebuttal Evidence II-B-83 (explaining that the lone example cited by CSXT represented a "single isolated offer, made only in order to avoid an 80% rate differential and the relative inaccessibility of the customer's silo to trucks").

PET as a general practice, the issue remains whether there is other evidence in the record to support its feasibility.

CSXT cites to M&G's own Alternative Logistics Plan ("ALP") as "[p]erhaps the best evidence of the real and feasible intermodal options available to M&G."[115] In 2009, M&G's consultant ███████████████████ developed the detailed ALP study in an attempt to find alternatives to an exclusive CSXT relationship.[116]

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As CSXT notes, "[t]he record does not expressly state why M&G chose not to pursue the Alternative Logistics Plan,"[121] and M&G does not provide any contemporaneous documentation specifically explaining why the ALP study recommendations were not implemented. M&G argues on rebuttal that the plan was ultimately deemed ineffective because "there was no evidence that M&G could obtain the rate reductions that the ALP assumed."[122] CSXT itself appears to concede this point by providing its own pricing information for its various proposed alternatives. However, the relevant issue in the context of the threshold feasibility analysis is not whether the proposed ALP alternatives would be economically effective, but rather whether they

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[115] Reply Evidence II-19.

[116] See, e.g., id., Exhibit II-B-8.

[117] In its opening submission, M&G elected not to discuss the ALP study in detail, making only passing reference to a prior submission in this proceeding. See Opening Evidence I-3 and n.4.

[118] Reply Evidence II-19 and II-23.

[119] Id., Exhibit II-B-6.

[120] Id.

[121] Id. at II-25.

[122] Rebuttal Evidence II-B-35.

provide some support for the general proposition that double transloading is a practically feasible alternative to transporting M&G's PET by railcar.[123]

With regard to the ALP study, M&G further argues that "product integrity concerns ultimately rendered the transload option untenable."[124] However, M&G provides no documentation or specific support for this proposition other than references to its prior generalized arguments on product integrity submitted as part of this proceeding, which we have already addressed. ███ ███████████████████████████████████ We conclude that the product integrity concerns now raised by M&G do not render the double transload alternatives proposed by CSXT infeasible as a general matter, a conclusion supported by the ALP study, M&G's contemporaneous discussion of that study, and the testimony of CSXT's experts.[125]

However, while the record supports the overall feasibility of either direct truck shipments or truck-to-rail alternatives, CSXT fails to justify any alternatives that would require more than two transloads. As M&G notes, CSXT's own expert witnesses were only able to support the addition of one more transload to M&G's existing distribution chain without implicating product integrity concerns.[126] Accordingly, based upon the current record, we conclude that alternatives involving more than two transloads would not be feasible.[127]

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[123] Likewise, M&G's assertion that implementation of the overall ALP recommendations would not realize any savings is irrelevant for purposes of the threshold feasibility analysis. See id. at II-B-36.

[124] Id. at II-B-35.

[125] Reply Evidence II-58 to II-61. M&G suggests that the ALP study was not adopted because adoption of its recommendations could mean that the company might lose customers, see Rebuttal Evidence II-B-34 to II-B-35 (quoting Reply Evidence, Exhibit II-B-10), pointing to a single email to support this claim. However, the email in question merely notes that to the extent captive CSXT customers were affected by adoption of one of the ALP study proposals, M&G might have to make alternative storage arrangements, convince the customers to accept trucks, or lose the business. We believe that this statement, standing alone, is insufficient to demonstrate that M&G in fact believed that it would lose the captive customers if one of the ALP study proposals was implemented.

[126] Rebuttal Evidence II-B-89. CSXT notes that in the opinion of its experts, "if M&G follows the best practices outlined above of establishing reasonable pressure guidelines, mitigating heat, and ensuring straight and smooth connections, adding one more transload to its logistics chain does not significantly increase the risk of PET degradation." Reply Evidence II-61.

[127] Specific alternatives proposed by CSXT involving more than two transloads will be identified and addressed below in the rate-specific analyses.

Additional Impediments to Expanded Truck Service from Apple Grove

M&G makes a variety of arguments in support of its contention that expanded truck service for movements originating at Apple Grove is not feasible. First, M&G estimates that the cost to reconfigure Apple Grove to enable actual direct truck loading would be ███████.[128] Second, M&G estimates that it would cost over ███████ to construct sufficient facilities at Apple Grove to increase its transloading capacity to handle the issue traffic by truck without requiring off-site storage.[129] Third, M&G argues that a substantial increase in trucking out of Apple Grove would entail significantly higher administrative and operating costs.[130] Fourth, M&G claims that it cannot secure sufficient additional truck capacity to accommodate enhanced truck service from Apple Grove.[131]

CSXT counters by asserting that M&G could convert ████ railcars per year to truck "without spending a cent on capital infrastructure" and "could therefore ship 100% of the volume of every Apple Grove-originating complaint lane [via truck] without any new capital investments."[132] CSXT further argues that M&G exaggerates the logistical difficulties and the

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[128] Opening Evidence II-B-34. As noted above, the existing infrastructure at Apple Grove does not support the direct loading of trucks from the production facilities. See supra p. 30. Despite how we have defined "direct trucking" for purposes of the balance of this opinion— see supra note 98—the ███████ figure represents M&G's estimate of what it would cost to enable actual direct loading of trucks at Apple Grove as opposed to transloading from a railcar to a truck.

[129] Id. at II-B-38. Again, in contrast to how we have defined "direct trucking" for purposes of the balance of this opinion, see supra note 98, the ███████ figure represents M&G's estimate of what it would cost to expand current truck loading operations at Apple Grove, which involve direct loading of PET from the production facilities into railcars and then transloading it into trucks. Thus, the parties refer to the expansion of existing operations as involving an increase in Apple Grove's transloading capacity.

[130] Id. at II-B-43. M&G asserts that each truck shipment requires up to nearly three times as many logistical steps as a shipment by rail. Id. at II-B-45. M&G further asserts that enhanced trucking operations at Apple Grove would require the hiring of additional personnel. Id. at II-B-45 to II-B-46.

[131] Id. at II-B-46. M&G explains that capacity constraints in the motor carrier industry, including a shortage of both trucks and drivers, would hinder any shift to enhanced trucking operations. Id. at II-B-46 to II-B-47.

[132] Reply Evidence II-62. CSXT effectively concedes that constructing facilities at Apple Grove to enable direct truck loading would be prohibitively expensive. Id. at II-62 n.60. CSXT further asserts, however, that "M&G has grossly inflated [the] purported capital costs" of

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higher administrative and operating costs associated with increased trucking operations.[133] CSXT also asserts that ample capacity exists in the motor carrier industry, and that M&G easily could secure additional dedicated truck capacity at lower rates in exchange for certain volume commitments.[134]

M&G responds that CSXT's evidence regarding (a) M&G's current ability to handle significantly increased trucking operations at Apple Grove and (b) the capital costs associated with a potential expansion of Apple Grove truck loading capacity lacks credibility and ignores the real-world constraints of that facility.[135] M&G also disputes CSXT's claim that increased trucking operations at Apple Grove would not entail significantly higher administrative and operating costs.[136] M&G further explains that truck capacity and driver constraints are real, and that volume commitments would lead to lower rates only in a handful of isolated instances.[137]

Were we to conclude that the rates governing a significant portion of the challenged movements originating from Apple Grove were otherwise being effectively constrained by competitive alternatives, we would need to consider M&G's argument that the increased capital and operating costs associated with significantly enhanced Apple Grove trucking operations render such operations cost-prohibitive, as well as CSXT's argument that shifting all of the challenged movements originating from Apple Grove from railcar to truck could be accomplished at minimal cost. Here, however, we conclude that only three rates governing shipments originating at Apple Grove—covering an annual average of approximately ■ railcars[138]—are being effectively constrained.[139] Our conclusion therefore assumes that just over

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(continued...)
increasing Apple Grove's internal transloading capacity, and that such an increase is unnecessary in any event. Id. at II-65.

[133] Id. CSXT claims that most of these costs would be incurred by the motor carriers, and characterizes as "absurd" the notion that M&G would need to hire ■ personnel to support increased trucking operations at Apple Grove. Id. at II-66.

[134] Id. at II-67 to II-68. CSXT suggests that M&G's failure to do so is the result of a business decision to choose flexibility over volume commitments. Id. at II-68.

[135] Rebuttal Evidence I-19 to I-21.

[136] Id. at II-B-125 to II-B-128.

[137] Id. at II-B-130 to II-B-133.

[138] Opening Evidence, Exhibit II-B-5. The annual average number of carloads moving under the Apple Grove-Columbus rate is ■, the annual average number of carloads moving under the Apple Grove-Lynchburg rate is ■, and the annual average number of carloads moving under the Apple Grove-Clifton Forge rate is ■. Id.

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one additional railcar per workday could be cost effectively shifted to trucks at the Apple Grove facility as it is currently structured. There is nothing in the record to suggest that such a relatively small amount of diverted traffic could not currently be accommodated at Apple Grove at minimal cost.[140] We therefore find it unnecessary to address M&G's arguments, and CSXT's counter-arguments, regarding additional impediments to expanded truck service from Apple Grove.

<div align="center">RATE-SPECIFIC ANALYSES</div>

Apple Grove-Chicago

Twelve contested lanes are governed by the Apple Grove-Chicago rate, the first of which is the Apple Grove-Aguila movement (J-7). On opening, M&G proposes a direct truck alternative.[141] That alternative has a price of ███ and a limit price of ███.[142] CSXT proposes trucking from Apple Grove to Lima and then transloading to rail for shipment to Chicago.[143] The price of CSXT's transloading alternative is ███. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███.[144] M&G's restated price for CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ███████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Chicago rate effectively, and conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion. An alternative that requires trucking to Lima and then transloading for delivery to Chicago would not have any of the intangible benefits typically associated with a direct truck option—e.g., increased reliability, better on-time performance, and the provision of certain

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(continued...)

[139] In 2010, M&G conducted almost ███ this number of rail-to-truck transloads at Apple Grove. Reply Evidence II-14.

[140] As CSXT notes, some excess transloading capacity already exists at Apple Grove. Id. at II-63 to II-65. See also Rebuttal Evidence II-B-99 (explaining that M&G's best loading day during a recent peak period was ███, and that the average of the heaviest loading days during that period was ███).

[141] Opening Evidence II-B-83.

[142] In these rate-specific analyses, as a general matter we indicate the limit price for a proposed alternative only when it differs from the stated price of the alternative. The limit price calculations are set forth in the highly confidential electronic workpapers.

[143] Reply Evidence, Exhibit II-B-2 at 19.

[144] Rebuttal Evidence II-B-179.

inventory control benefits to the parties.[145] Moreover, in situations involving a lowest limit price R/VC ratio significantly above the carrier's RSAM figure, it is unlikely that even a direct truck option would have intangible benefits sufficient to overcome the preliminary conclusion associated with such a discrepancy.

The Apple Grove-Altamira movement (J-9) is also governed by the Apple Grove-Chicago rate. On opening, M&G proposes no alternatives.[146] CSXT proposes trucking from Apple Grove to Lima and then transloading to rail for shipment to Chicago.[147] The price of CSXT's transloading alternative is ███. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███.[148] M&G's restated price for CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ██████████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Chicago rate effectively and, as with the foregoing lane's discussion of a transload option, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.

The Apple Grove-Champaign movement (J-10) is also governed by the Apple Grove-Chicago rate. On opening, M&G proposes a direct truck alternative.[149] That alternative has a price of ███ and a limit price of ███. CSXT likewise proposes a direct truck alternative,[150] which has a price of ███ and a limit price of ███. In addition, CSXT proposes trucking from Apple Grove to Lima and then transloading to rail for shipment to Chicago.[151] The price of CSXT's transloading alternative is ███. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███.[152] The price of CSXT's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ██████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Chicago rate effectively and, even though this alternative likely has the same intangible benefits associated with any direct truck option, we conclude that such benefits

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[145] Id. at I-11.

[146] Opening Evidence II-B-85.

[147] Reply Evidence, Exhibit II-B-2 at 22.

[148] Rebuttal Evidence II-B-187.

[149] Opening Evidence II-B-86.

[150] Reply Evidence, Exhibit II-B-2 at 23.

[151] Id.

[152] Rebuttal Evidence II-B-189.

are insufficient to overcome our preliminary conclusion in light of the significant disparity between the lowest limit price R/VC ratio and the carrier's RSAM figure.

The Apple Grove-Glendale movement (J-16) is also governed by the Apple Grove-Chicago rate. On opening, M&G proposes a direct truck alternative.[153] That alternative has a price of ███ and a limit price of ███. CSXT proposes trucking from Apple Grove to Lima and then transloading to rail for shipment to Chicago.[154] The price of CSXT's transloading alternative is ███. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███.[155] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ███████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Chicago rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.

The Apple Grove-Lenexa movement (J-21) is also governed by the Apple Grove-Chicago rate. On opening, M&G proposes a direct truck alternative.[156] That alternative has a price of ███ and a limit price of ███. CSXT proposes trucking from Apple Grove to Lima and then transloading to rail for shipment to Chicago.[157] The price of CSXT's transloading alternative is ███. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███.[158] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ███████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Chicago rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.

The Apple Grove-Little Rock movement (J-22) is also governed by the Apple Grove-Chicago rate. On opening, M&G proposes a direct truck alternative.[159] That alternative has a

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[153] Opening Evidence II-B-93.

[154] Reply Evidence, Exhibit II-B-2 at 30.

[155] Rebuttal Evidence II-B-205.

[156] Opening Evidence II-B-98.

[157] Reply Evidence, Exhibit II-B-2 at 36.

[158] Rebuttal Evidence II-B-220.

[159] Opening Evidence II-B-99.

price of ▮ and a limit price of ▮. CSXT proposes trucking from Apple Grove to Lima and then transloading to rail for shipment to Chicago.[160] The price of CSXT's transloading alternative is ▮. On rebuttal, M&G restates the price of CSXT's transloading alternative as ▮.[161] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ▮ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Chicago rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.

The Apple Grove-Rockford movement (J-25) is also governed by the Apple Grove-Chicago rate. On opening, M&G proposes a direct truck alternative.[162] That alternative has a price of ▮ and a limit price of ▮. CSXT proposes trucking from Apple Grove to Lima and then transloading to rail for shipment to Chicago.[163] The price of CSXT's transloading alternative is ▮. On rebuttal, M&G restates the price of CSXT's transloading alternative as ▮.[164] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ▮ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Chicago rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.

The Apple Grove-Rogers movement (J-26) is also governed by the Apple Grove-Chicago rate. On opening, M&G proposes a direct truck alternative.[165] That alternative has a price of ▮ and a limit price of ▮. CSXT proposes trucking from Apple Grove to Lima and then transloading to rail for shipment to Chicago.[166] The price of CSXT's transloading alternative is ▮. On rebuttal, M&G restates the price of CSXT's transloading alternative as ▮.[167] M&G's restated price for CSXT's transloading alternative represents the lowest limit

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[160] Reply Evidence, Exhibit II-B-2 at 38.

[161] Rebuttal Evidence II-B-224.

[162] Opening Evidence II-B-103.

[163] Reply Evidence, Exhibit II-B-2 at 41.

[164] Rebuttal Evidence II-B-232.

[165] Opening Evidence II-B-104.

[166] Reply Evidence, Exhibit II-B-2 at 42.

[167] Rebuttal Evidence II-B-235.

price. Thus, the lowest limit price R/VC ratio for this movement is ███████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Chicago rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.

The Apple Grove-Sweetwater movement (J-30) is also governed by the Apple Grove-Chicago rate. On opening, M&G proposes a direct truck alternative.[168] That alternative has a price of ████ and a limit price of ████. CSXT proposes trucking from Apple Grove to Lima and then transloading to rail for shipment to Chicago.[169] The price of CSXT's transloading alternative is ████. On rebuttal, M&G restates the price of CSXT's transloading alternative as ████.[170] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is █████████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Chicago rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.

The Apple Grove-University Park movement (J-32) is also governed by the Apple Grove-Chicago rate. On opening, M&G proposes a direct truck alternative.[171] That alternative has a price of ████ and a limit price of ████. CSXT likewise proposes a direct truck alternative,[172] which has a price of ████ and a limit price of ████. In addition, CSXT proposes trucking from Apple Grove to Lima and then transloading to rail for shipment to Chicago.[173] The price of CSXT's transloading alternative is ████. On rebuttal, M&G restates the price of CSXT's transloading alternative as ████.[174] The price of CSXT's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is █████████ █████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Chicago rate effectively and, even though this alternative likely has the

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[168] Opening Evidence II-B-108.

[169] Reply Evidence, Exhibit II-B-2 at 43.

[170] Rebuttal Evidence II-B-238.

[171] Opening Evidence II-B-110.

[172] Reply Evidence, Exhibit II-B-2 at 44.

[173] Id.

[174] Rebuttal Evidence II-B-241.

same intangible benefits associated with any direct truck option, we conclude that such benefits are insufficient to overcome our preliminary conclusion in light of the significant disparity between the lowest limit price R/VC ratio and the carrier's RSAM figure.

The Apple Grove-Vado movement (J-33) is also governed by the Apple Grove-Chicago rate. On opening, M&G proposes a direct truck alternative.[175] That alternative has a price of ▮▮▮ and a limit price of ▮▮▮. CSXT proposes trucking from Apple Grove to Lima and then transloading to rail for shipment to Chicago.[176] The price of CSXT's transloading alternative is ▮▮▮. On rebuttal, M&G restates the price of CSXT's transloading alternative as ▮▮▮.[177] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ▮▮▮▮▮▮ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Chicago rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.

The Apple Grove-West Chicago movement (J-34) is also governed by the Apple Grove-Chicago rate. On opening, M&G proposes a direct truck alternative.[178] CSXT likewise proposes a direct truck alternative,[179] which has a price of ▮▮▮ and a limit price of ▮▮▮. In addition, CSXT proposes trucking from Apple Grove to Lima and then transloading to rail for shipment to Chicago.[180] The price of CSXT's transloading alternative is ▮▮▮. On rebuttal, M&G restates the price of CSXT's transloading alternative as ▮▮▮, and restates the price of CSXT's direct truck alternative as ▮▮▮ (for a limit price of ▮▮▮).[181] The price of CSXT's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ▮▮▮▮▮▮ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Chicago rate effectively and, even though this alternative likely has the same intangible benefits associated with any direct truck option, we

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[175] Opening Evidence II-B-111.

[176] Reply Evidence Exhibit, II-B-2 at 46.

[177] Rebuttal Evidence II-B-245.

[178] Opening Evidence II-B-112. We do not indicate or utilize in our analysis a price/limit price for this particular truck alternative given M&G's subsequent restatement of CSXT's direct truck alternative.

[179] Reply Evidence, Exhibit II-B-2 at 47.

[180] Id.

[181] Rebuttal Evidence II-B-248.

conclude that such benefits are insufficient to overcome our preliminary conclusion in light of the significant disparity between the lowest limit price R/VC ratio and the carrier's RSAM figure.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the Apple Grove-Chicago rate significantly exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest limit price alternatives proposed for movements governed by the Apple Grove-Chicago rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest limit price alternatives have intangible features sufficient to overcome our preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Apple Grove-Chicago rate.

Apple Grove-Columbus

Three contested lanes travel under the Apple Grove-Columbus rate, the first of which is the Apple Grove-Fremont movement (J-15). On opening, M&G proposes a direct truck alternative.[182] CSXT likewise proposes a direct truck alternative,[183] which has a price of ███ and a limit price of ███. In addition, CSXT proposes trucking from Apple Grove to Columbus and then transloading to rail.[184] The price of CSXT's transloading alternative is ███. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███, and restates the price of CSXT's direct truck alternative as ███ (for a limit price of ███).[185] M&G's restated price for CSXT's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ███ is below CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's Apple Grove-Columbus rate effectively, and conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion. As previously noted, certain intangible benefits are typically associated with direct trucking.

The Apple Grove-Hebron movement (J-20) is also governed by the Apple Grove-Columbus rate. On opening, M&G proposes a direct truck alternative.[186] CSXT likewise

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[182] Opening Evidence II-B-91. We do not indicate or utilize in our analysis a price/limit price for this particular truck alternative given M&G's subsequent restatement of CSXT's direct truck alternative.

[183] Reply Evidence, Exhibit II-B-2 at 28.

[184] Id.

[185] Rebuttal Evidence II-B-199.

[186] Opening Evidence II-B-97. We do not indicate or utilize in our analysis a price/limit price for this particular truck alternative given M&G's subsequent restatement of CSXT's direct truck alternative.

proposes a direct truck alternative,[187] which has a price of ███ and a limit price of ███. On rebuttal, M&G restates the price of CSXT's direct truck alternative as ███ (for a limit price of ███).[188] The price of CSXT's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ██████████████ below CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's Apple Grove-Columbus rate effectively, and conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion. As previously noted, certain intangible benefits are typically associated with direct trucking.

The Apple Grove-Nicholasville movement (J-24) is also governed by the Apple Grove-Columbus rate. On opening, M&G proposes a direct truck alternative.[189] That alternative has a price of ███ and a limit price of ███. CSXT proposes trucking from Apple Grove to Columbus and then transloading to rail for shipment to Nicholasville.[190] The price of CSXT's transloading alternative is ███. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███.[191] The price of M&G's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ██████████████ below CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's Apple Grove-Columbus rate effectively, and conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion. As previously noted, certain intangible benefits are typically associated with direct trucking.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the Apple Grove-Columbus rate falls below CSXT's RSAM figure, and we therefore preliminarily conclude that the lowest limit price alternatives proposed for movements governed by the Apple Grove-Columbus rate do exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest limit price alternatives have intangible features sufficient to overcome our preliminary conclusion. As a result, we conclude that CSXT is not market dominant with regard to the Apple Grove-Columbus rate.

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[187] Reply Evidence, Exhibit II-B-2 at 35.

[188] Rebuttal Evidence II-B-217.

[189] Opening Evidence II-B-101.

[190] Reply Evidence, Exhibit II-B-2 at 39.

[191] Rebuttal Evidence II-B-227.

Apple Grove-Effingham

One contested lane, Apple Grove-Champaign (J-11), is governed by the Apple Grove-Effingham rate. On opening, M&G proposes a direct truck alternative.[192] That alternative has a price of ███ and a limit price of ███. CSXT likewise proposes a direct truck alternative,[193] which has a price of ███ and a limit price of ███. The price of CSXT's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ████████████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Effingham rate effectively and, even though this alternative likely has the same intangible benefits associated with any direct truck option, we conclude that such benefits are insufficient to overcome our preliminary conclusion in light of the significant disparity between the lowest limit price R/VC ratio and the carrier's RSAM figure. As a result, we conclude that CSXT is market dominant with regard to the Apple Grove-Effingham rate.

Apple Grove-Hagerstown

Three contested lanes are governed by the Apple Grove-Hagerstown rate, the first of which is the Apple Grove-Allentown movement (J-8). On opening, M&G proposes a direct truck alternative.[194] CSXT likewise proposes a direct truck alternative,[195] which has a price of ███ and a limit price of ███. In addition, CSXT proposes trucking from Apple Grove to St. James and then transloading to rail for shipment to Allentown.[196] On rebuttal, M&G restates the price of CSXT's direct truck alternative as ███ (for a limit price of ███).[197] M&G's restated price for CSXT's direct truck alternative generates the lowest limit price. Thus, the

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[192] Opening Evidence II-B-87.

[193] Reply Evidence, Exhibit II-B-2 at 25.

[194] Opening Evidence II-B-84. We do not indicate or utilize in our analysis a price/limit price for this particular truck alternative given M&G's subsequent restatement of CSXT's direct truck alternative.

[195] Reply Evidence, Exhibit II-B-2 at 20.

[196] Id. CSXT claims that the transload location it proposes is Hagerstown. Id. But M&G supports its claim that the proposed transload location is actually in St. James. See Rebuttal Evidence II-B-19 to II-B-20 and Exhibit II-B-30. ████████████ ████████ We therefore conclude that CSXT's proposed transloading option for this lane does not constitute a feasible alternative. As a result, we do not indicate or utilize in our analysis a price/limit price for this transloading alternative or M&G's subsequent restatement thereof.

[197] Rebuttal Evidence II-B-183.

lowest limit price R/VC ratio for this movement is ███████████████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Hagerstown rate effectively and, even though this alternative likely has the same intangible benefits associated with any direct truck option, we conclude that such benefits are insufficient to overcome our preliminary conclusion in light of the significant disparity between the lowest limit price R/VC ratio and the carrier's RSAM figure.

The Apple Grove-Havre de Grace movement (J-18) is also governed by the Apple Grove-Hagerstown rate. On opening, M&G proposes a direct truck alternative.[198] That alternative has a price of ███ and a limit price of ███. CSXT likewise proposes a direct truck alternative,[199] which has a price of ███ and a limit price of ███. In addition, CSXT proposes trucking from Apple Grove to St. James and then transloading to rail for shipment to Havre de Grace.[200] The price of CSXT's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ███████████████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Hagerstown rate effectively and, even though this alternative likely has the same intangible benefits associated with any direct truck option, we conclude that such benefits are insufficient to overcome our preliminary conclusion in light of the significant disparity between the lowest limit price R/VC ratio and the carrier's RSAM figure.

The Apple Grove-Hazleton movement (J-19) is also governed by the Apple Grove-Hagerstown rate. On opening, M&G proposes a direct truck alternative.[201] CSXT likewise proposes a direct truck alternative,[202] which has a price of ███ and a limit price of ███. In addition, CSXT proposes trucking from Apple Grove to St. James and then transloading to rail

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[198] Opening Evidence II-B-95.

[199] Reply Evidence, Exhibit II-B-2 at 31.

[200] Id. As previously explained, the St. James location is not a feasible transloading site. See supra note 196. We therefore conclude that CSXT's proposed transloading option for this lane does not constitute a feasible alternative. As a result, we do not indicate or utilize in our analysis a price/limit price for this transloading alternative or M&G's subsequent restatement thereof.

[201] Opening Evidence II-B-96. We do not indicate or utilize in our analysis a price/limit price for this particular truck alternative given M&G's subsequent restatement of CSXT's direct truck alternative.

[202] Reply Evidence, Exhibit II-B-2 at 33.

for shipment to Hazleton.[203] On rebuttal, M&G restates the price of CSXT's direct truck alternative as ███ (for a limit price of ███).[204] The price of CSXT's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ███████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Hagerstown rate effectively and, even though this alternative likely has the same intangible benefits associated with any direct truck option, we conclude that such benefits are insufficient to overcome our preliminary conclusion in light of the significant disparity between the lowest limit price R/VC ratio and the carrier's RSAM figure.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the Apple Grove-Hagerstown rate significantly exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest limit price alternatives proposed for movements governed by the Apple Grove-Hagerstown rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest limit price alternatives have intangible features sufficient to overcome our preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Apple Grove-Hagerstown rate.

Apple Grove-Louisville

One contested lane, Apple Grove-Franklin (J-14), is governed by the Apple Grove-Louisville rate. On opening, M&G proposes a direct truck alternative.[205] That alternative has a price of ███ and a limit price of ███. CSXT likewise proposes a direct truck alternative,[206] which has a price of ███ and a limit price of ███. The price of CSXT's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ███████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Louisville rate effectively and, even though this alternative likely has the same intangible benefits associated with any direct truck option, we conclude that such benefits are insufficient to overcome our preliminary conclusion in light of the significant disparity between the lowest limit price R/VC ratio and the carrier's RSAM

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[203] Id. As previously explained, the St. James location is not a feasible transloading site. See supra note 196. We therefore conclude that CSXT's proposed transloading option for this lane does not constitute a feasible alternative. As a result, we do not indicate or utilize in our analysis a price/limit price for this transloading alternative or M&G's subsequent restatement thereof.

[204] Rebuttal Evidence II-B-212.

[205] Opening Evidence II-B-90.

[206] Reply Evidence, Exhibit II-B-2 at 26.

figure. As a result, we conclude that CSXT is market dominant with regard to the Apple Grove-Louisville rate.

Apple Grove-Lynchburg

One contested lane, Apple Grove-Waynesville (J-35), is governed by the Apple Grove-Lynchburg rate. On opening, M&G proposes a direct truck alternative.[207] CSXT likewise proposes a direct truck alternative,[208] which has a price of █████ and a limit price of █████. On rebuttal, M&G restates the price of CSXT's direct truck alternative as █████ (for a limit price of █████).[209] The price of CSXT's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is █████████████ below CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's Apple Grove-Lynchburg rate effectively, and conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.[210] As a result, we conclude that CSXT is not market dominant with regard to the Apple Grove-Lynchburg rate.

Belpre-Chicago

One contested lane, Belpre-Aguila (J-36), is governed by the Belpre-Chicago rate.[211] On opening, M&G proposes a direct truck alternative.[212] That alternative has a price of █████ and a limit price of █████. CSXT proposes trucking from Apple Grove to Lima and then transloading to rail for shipment to Chicago.[213] The price of CSXT's transloading alternative is

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[207] Opening Evidence II-B-113. We do not indicate or utilize in our analysis a price/limit price for this particular truck alternative given M&G's subsequent restatement of CSXT's direct truck alternative.

[208] Reply Evidence, Exhibit II-B-2 at 49.

[209] Rebuttal Evidence II-B-252.

[210] As previously noted, certain intangible benefits are typically associated with direct trucking.

[211] As discussed elsewhere, none of the proposed alternatives effectively restrain CSXT's Apple Grove-Belpre rate. See infra pp. 58-59. Likewise, none of the proposed alternatives effectively restrain CSXT's Chicago-Belpre rate. See infra p. 53. CSXT therefore is market dominant as to all of the challenged rates governing movements into Belpre. As a result, alternatives to movements originating in Belpre involving a transload at that location would not implicate the concerns expressed by M&G with respect to alternatives that might involve more than two transloads. See Rebuttal Evidence II-B-90.

[212] Opening Evidence II-B-114.

[213] Reply Evidence, Exhibit II-B-2 at 50.

███. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███.[214] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ███████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Belpre-Chicago rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Belpre-Chicago rate.

Belpre-Columbus

One contested lane, Belpre-Fremont (J-40), is governed by the Belpre-Columbus rate.[215] On opening, M&G proposes a direct truck alternative.[216] That alternative has a price of ███ and a limit price of ███. CSXT proposes trucking from Belpre to Columbus and then transloading to rail for shipment to Fremont.[217] The price of CSXT's transloading alternative is ███. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███.[218] The price of M&G's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ███████████ below CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's Belpre-Columbus rate effectively, and conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.[219] As a result, we conclude that CSXT is not market dominant with regard to the Belpre-Columbus rate.

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[214] Rebuttal Evidence II-B-255.

[215] As discussed elsewhere, none of the proposed alternatives effectively restrain CSXT's Apple Grove-Belpre rate. See infra pp. 58-59. Likewise, none of the proposed alternatives effectively restrain CSXT's Chicago-Belpre rate. See infra p. 53. CSXT therefore is market dominant as to all of the challenged rates governing movements into Belpre. As a result, alternatives to movements originating in Belpre involving a transload at that location would not implicate the concerns expressed by M&G with respect to alternatives that might involve more than two transloads. See Rebuttal Evidence II-B-90.

[216] Opening Evidence II-B-118.

[217] Reply Evidence, Exhibit II-B-2 at 53.

[218] Rebuttal Evidence II-B-264.

[219] As previously noted, certain intangible benefits are typically associated with direct trucking.

Belpre-Hagerstown

Two contested lanes are governed by the Belpre-Hagerstown rate, the first of which is the Belpre-Allentown movement (J-37).[220] On opening, M&G proposes a direct truck alternative.[221] That alternative has a price of ▮▮▮ and a limit price of ▮▮▮. CSXT proposes trucking from Apple Grove to St. James and then transloading to rail for shipment to Allentown.[222] The price of M&G's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ▮▮▮▮▮▮▮▮▮▮▮ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Belpre-Hagerstown rate effectively and, even though this alternative likely has the same intangible benefits associated with any direct truck option, we conclude that such benefits are insufficient to overcome our preliminary conclusion in light of the significant disparity between the lowest limit price R/VC ratio and the carrier's RSAM figure.

The second contested lane governed by the Belpre-Hagerstown rate is the Belpre-Hazleton movement (J-41).[223] On opening, M&G proposes a direct truck alternative.[224] CSXT

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[220] As discussed elsewhere, none of the proposed alternatives effectively restrain CSXT's Apple Grove-Belpre rate. See infra pp. 58-59. Likewise, none of the proposed alternatives effectively restrain CSXT's Chicago-Belpre rate. See infra p. 53. CSXT therefore is market dominant as to all of the challenged rates governing movements into Belpre. As a result, alternatives to movements originating in Belpre involving a transload at that location would not implicate the concerns expressed by M&G with respect to alternatives that might involve more than two transloads. See Rebuttal Evidence II-B-90.

[221] Opening Evidence II-B-115.

[222] Reply Evidence, Exhibit II-B-2 at 51. As previously explained, the St. James location is not a feasible transloading site. See supra note 196. We therefore conclude that CSXT's proposed transloading option for this lane does not constitute a feasible alternative. As a result, we do not indicate or utilize in our analysis a price/limit price for this transloading alternative or M&G's subsequent restatement thereof.

[223] As discussed elsewhere, none of the proposed alternatives effectively restrain CSXT's Apple Grove-Belpre rate. See infra pp. 58-59. Likewise, none of the proposed alternatives effectively restrain CSXT's Chicago-Belpre rate. See infra p. 53. CSXT therefore is market dominant as to all of the challenged rates governing movements into Belpre. As a result, alternatives to movements originating in Belpre involving a transload at that location would not implicate the concerns expressed by M&G with respect to alternatives that might involve more than two transloads. See Rebuttal Evidence II-B-90.

[224] Opening Evidence II-B-119. We do not indicate or utilize in our analysis a price/limit price for this particular truck alternative given M&G's subsequent restatement of CSXT's direct truck alternative.

likewise proposes a direct truck alternative,[225] which has a price of ▮▮▮ and a limit price of
▮▮▮. On rebuttal, M&G restates the price of CSXT's direct truck alternative as ▮▮▮ (for a
limit price of ▮▮▮).[226] The price of CSXT's direct truck alternative generates the lowest limit
price. Thus, the lowest limit price R/VC ratio for this movement is ▮▮▮▮▮▮▮▮▮▮▮
above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative
with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's
Belpre-Hagerstown rate effectively and, even though this alternative likely has the same
intangible benefits associated with any direct truck option, we conclude that such benefits are
insufficient to overcome our preliminary conclusion in light of the significant disparity between
the lowest limit price R/VC ratio and the carrier's RSAM figure.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed
by the Belpre-Hagerstown rate significantly exceeds CSXT's RSAM figure, and we therefore
preliminarily conclude that none of the lowest limit price alternatives proposed for movements
governed by the Belpre-Hagerstown rate exert competitive pressure sufficient to restrain that rate
effectively. Furthermore, none of the lowest limit price alternatives have intangible features
sufficient to overcome our preliminary conclusion. As a result, we conclude that CSXT is
market dominant with regard to the Belpre-Hagerstown rate.

Belpre-Louisville

One contested lane, Belpre-Franklin (J-39), is governed by the Belpre-Louisville rate.[227]
On opening, M&G proposes a direct truck alternative.[228] CSXT likewise proposes a direct truck
alternative,[229] which has a price of ▮▮▮ and a limit price of ▮▮▮. On rebuttal, M&G
restates the price of CSXT's direct truck alternative as ▮▮▮ (for a limit price of ▮▮▮).[230]

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[225] Reply Evidence, Exhibit II-B-2 at 54.

[226] Rebuttal Evidence II-B-267.

[227] As discussed elsewhere, none of the proposed alternatives effectively restrain
CSXT's Apple Grove-Belpre rate. See infra pp. 58-59. Likewise, none of the proposed
alternatives effectively restrain CSXT's Chicago-Belpre rate. See infra p. 53. CSXT therefore is
market dominant as to all of the challenged rates governing movements into Belpre. As a result,
alternatives to movements originating in Belpre involving a transload at that location would not
implicate the concerns expressed by M&G with respect to alternatives that might involve more
than two transloads. See Rebuttal Evidence II-B-90.

[228] Opening Evidence II-B-117. We do not indicate or utilize in our analysis a
price/limit price for this particular truck alternative given M&G's subsequent restatement of
CSXT's direct truck alternative.

[229] Reply Evidence, Exhibit II-B-2 at 52.

[230] Rebuttal Evidence II-B-261.

The price of CSXT's direct truck alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ████████████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Belpre-Louisville rate effectively and, even though this alternative likely has the same intangible benefits associated with any direct truck option, we conclude that such benefits are insufficient to overcome our preliminary conclusion in light of the significant disparity between the lowest limit price R/VC ratio and the carrier's RSAM figure. As a result, we conclude that CSXT is market dominant with regard to the Belpre-Louisville rate.

Chicago-Apple Grove

Two contested lanes are governed by the Chicago-Apple Grove rate, the first of which is the Altamira-Apple Grove movement (J-1). On opening, M&G proposes a transloading alternative from Altamira to Apple Grove.[231] That alternative has a price of ████ and a limit price of ████. CSXT proposes transportation by rail from Chicago to Columbus and then transloading to truck for shipment to Apple Grove.[232] The price of CSXT's transloading alternative is ████. On rebuttal, M&G restates the price of CSXT's transloading alternative as ████.[233] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Apple Grove rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.

The Sweetwater-Apple Grove movement (J-48) is also governed by the Chicago-Apple Grove rate.[234] On opening, M&G proposes both a direct truck alternative and a transloading alternative from Sweetwater to Apple Grove.[235] M&G's direct truck alternative has a price of

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[231] Opening Evidence II-B-77.

[232] Reply Evidence, Exhibit II-B-2 at 12.

[233] Rebuttal Evidence II-B-162.

[234] As discussed elsewhere, none of the alternatives proposed for movements from Apple Grove to Sweetwater effectively restrain the rate governing that movement (Apple Grove-Chicago). See supra p. 41. CSXT therefore is market dominant as to the challenged rate governing movements into Sweetwater. As a result, alternatives to movements originating in Sweetwater involving a transload at that location would not implicate the concerns expressed by M&G with respect to alternatives that might involve more than two transloads. See Rebuttal Evidence II-B-90.

[235] Opening Evidence II-B-126.

██████ and a limit price of ██████, while its transloading alternative has a price of ██████ and a limit price of ██████. CSXT proposes transportation by rail from Chicago to Columbus and then transloading to truck for shipment to Apple Grove.[236] The price of CSXT's transloading alternative is ██████. On rebuttal, M&G restates the price of CSXT's transloading alternative as ██████.[237] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ██████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Apple Grove rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the Chicago-Apple Grove rate significantly exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest price alternatives proposed for movements governed by the Chicago-Apple Grove rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest price alternatives have intangible features sufficient to overcome our preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Apple Grove rate.

Chicago-Belpre

The only contested lane governed by the Chicago-Belpre rate is the Altamira-Belpre movement (J-2). On opening, M&G proposes a transloading alternative from Altamira to Belpre.[238] That alternative has a price of ██████ and a limit price of ██████. CSXT proposes transportation by rail from Chicago to Columbus and then transloading to truck for shipment to Belpre.[239] The price of CSXT's transloading alternative is ██████. On rebuttal, M&G restates the price of CSXT's transloading alternative as ██████.[240] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ██████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Belpre rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Belpre rate.

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[236] Reply Evidence, Exhibit II-B-2 at 55.

[237] Rebuttal Evidence II-B-270.

[238] Opening Evidence II-B-78.

[239] Reply Evidence, Exhibit II-B-2 at 13.

[240] Rebuttal Evidence II-B-165.

Chicago-Columbus

The only contested lane governed by the Chicago-Columbus rate is the Altamira-Cambridge movement (J-3). On opening, M&G proposes a transloading alternative from Altamira to Cambridge.[241] That alternative has a price of ███ and a limit price of ███. CSXT proposes transportation by rail from Chicago to Lima and then transloading to truck for shipment to Cambridge.[242] The price of CSXT's transloading alternative is ███. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███.[243] The price of M&G's transloading alternative generates the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ████████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Chicago-Columbus rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the Chicago-Columbus rate.

New Orleans-Cartersville

Two contested lanes are governed by the New Orleans-Cartersville rate, the first of which is the Altamira-Cartersville movement (J-4). On opening, M&G proposes a transloading alternative from Altamira to Cartersville.[244] That alternative has a price of ███ and a limit price of ███. CSXT proposes transportation by rail from New Orleans to Dalton and then transloading to truck for shipment to Cartersville.[245] The price of CSXT's transloading alternative is ███. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███.[246] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ████████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Cartersville rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.

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[241] Opening Evidence II-B-79.

[242] Reply Evidence, Exhibit II-B-2 at 14.

[243] Rebuttal Evidence II-B-168.

[244] Opening Evidence II-B-80.

[245] Reply Evidence, Exhibit II-B-2 at 15.

[246] Rebuttal Evidence II-B-170.

The Sweetwater-Cartersville movement (J-49) is also governed by the New Orleans-Cartersville rate.[247] On opening, M&G proposes both a direct truck alternative and a transloading alternative from Sweetwater to Cartersville.[248] M&G's direct truck alternative has a price of ███ and a limit price of ███, while its transloading alternative has a price of ███ and a limit price of ███. CSXT proposes transportation by rail from New Orleans to Dalton and then transloading to truck for shipment to Cartersville.[249] The price of CSXT's transloading alternative is ███. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███.[250] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ███████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's New Orleans-Cartersville rate effectively and, as with our previous discussion regarding proposed transloading alternatives, conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the New Orleans-Cartersville rate significantly exceeds CSXT's RSAM figure, and we therefore preliminarily conclude that none of the lowest price alternatives proposed for movements governed by the New Orleans-Cartersville rate exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest price alternatives have intangible features sufficient to overcome our preliminary conclusion. As a result, we conclude that CSXT is market dominant with regard to the New Orleans-Cartersville rate.

New Orleans-Clifton Forge

Two contested lanes are governed by the New Orleans-Clifton Forge rate, the first of which is the Altamira-Clifton Forge movement (J-5). On opening, M&G proposes a transloading alternative from Altamira to Clifton Forge.[251] That alternative has a price of

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[247] As discussed elsewhere, none of the alternatives proposed for movements from Apple Grove to Sweetwater effectively restrain the rate governing that movement (Apple Grove-Chicago). See supra p. 41. CSXT therefore is market dominant as to the challenged rate governing movements into Sweetwater. As a result, alternatives to movements originating in Sweetwater involving a transload at that location would not implicate the concerns expressed by M&G with respect to alternatives that might involve more than two transloads. See Rebuttal Evidence II-B-90.

[248] Opening Evidence II-B-127.

[249] Reply Evidence, Exhibit II-B-2 at 56.

[250] Rebuttal Evidence II-B-272.

[251] Opening Evidence II-B-81.

███████ and a limit price of ███████. CSXT proposes transportation by rail from New Orleans to Petersburg and then transloading to truck for shipment to Clifton Forge.[252] The price of CSXT's transloading alternative is ███████. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███████.[253] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ███████ █ below CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's New Orleans-Clifton Forge rate effectively, and conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.[254]

The Sweetwater-Clifton Forge movement (J-50) is also governed by the New Orleans-Clifton Forge rate.[255] On opening, M&G proposes both a direct truck alternative and a transloading alternative from Sweetwater to Clifton Forge.[256] M&G's direct truck alternative has a price of ███████ and a limit price of ███████, while its transloading alternative has a price of ███████ and a limit price of ███████. CSXT proposes transportation by rail from New Orleans to Petersburg and then transloading to truck for shipment to Clifton Forge.[257] The price of CSXT's transloading alternative is ███████. On rebuttal, M&G restates the price of CSXT's transloading alternative as ███████.[258] The price of CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ███████ below CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the

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[252] Reply Evidence, Exhibit II-B-2 at 16.

[253] Rebuttal Evidence II-B-173.

[254] Under certain circumstances, transportation via railcar might involve certain intangible benefits vis-à-vis transload alternatives (e.g., presumed shorter transport times) sufficient to overcome a preliminary conclusion that such alternatives exert competitive pressure sufficient to restrain rates effectively. Given the length of the movement at issue here and the attendant likelihood that delivery to the ultimate destination is not particularly time-sensitive, however, we conclude that such benefits are not sufficient to overcome our preliminary conclusion.

[255] As discussed elsewhere, none of the alternatives proposed for movements from Apple Grove to Sweetwater effectively restrain the rate governing that movement (Apple Grove-Chicago). See supra p. 41. CSXT therefore is market dominant as to the challenged rate governing movements into Sweetwater. As a result, alternatives to movements originating in Sweetwater involving a transload at that location would not implicate the concerns expressed by M&G with respect to alternatives that might involve more than two transloads. See Rebuttal Evidence II-B-90.

[256] Opening Evidence II-B-128.

[257] Reply Evidence, Exhibit II-B-2 at 57.

[258] Rebuttal Evidence II-B-275.

lowest limit price does exert competitive pressure sufficient to restrain CSXT's New Orleans-Clifton Forge rate effectively, and conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.[259]

As demonstrated above, the lowest limit price R/VC ratio for each of the lanes governed by the New Orleans-Clifton Forge rate falls below CSXT's RSAM figure, and we therefore preliminarily conclude that the lowest price alternatives proposed for movements governed by the New Orleans-Clifton Forge rate collectively exert competitive pressure sufficient to restrain that rate effectively. Furthermore, none of the lowest price alternatives have intangible features sufficient to overcome our preliminary conclusion. As a result, we conclude that CSXT is not market dominant with regard to the New Orleans-Clifton Forge rate.

New Orleans-Orlando

The only contested lane governed by the New Orleans-Orlando rate is the Altamira-Orlando movement (J-6). On opening, M&G proposes a transloading alternative from Altamira to Orlando.[260] That alternative has a price of ▮▮▮ and a limit price of ▮▮▮. CSXT proposes transportation by rail from New Orleans to City Point and then transloading to truck for shipment to Orlando.[261] The price of CSXT's transloading alternative is ▮▮▮. On rebuttal, M&G restates the price of CSXT's transloading alternative as ▮▮▮.[262] M&G's restated price for CSXT's transloading alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ▮▮▮▮▮▮▮▮ below CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's New Orleans-Orlando rate effectively, and conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.[263] As a result, we conclude that CSXT is not market dominant with regard to the New Orleans-Orlando rate.

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[259] Under certain circumstances, transportation via railcar might involve certain intangible benefits vis-à-vis transload alternatives (e.g., presumed shorter transport times) sufficient to overcome a preliminary conclusion that such alternatives exert competitive pressure sufficient to restrain rates effectively. Given the length of the movement at issue here and the attendant likelihood that delivery to the ultimate destination is not particularly time-sensitive, however, we conclude that such benefits are not sufficient to overcome our preliminary conclusion.

[260] Opening Evidence II-B-82.

[261] Reply Evidence, Exhibit II-B-2 at 17.

[262] Rebuttal Evidence II-B-176.

[263] Under certain circumstances, transportation via railcar might involve certain intangible benefits vis-à-vis transload alternatives (e.g., presumed shorter transport times) sufficient to overcome a preliminary conclusion that such alternatives exert competitive pressure

Apple Grove-Belpre

The Apple Grove-Belpre movement (SL-1) is governed by a single-line rate. On opening, M&G proposes no alternatives.[264] CSXT proposes a direct truck alternative, the price of which is ███.[265] On rebuttal, M&G restates the price of CSXT's direct truck alternative as ███.[266] The price of CSXT's direct truck alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ██████████ below CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does exert competitive pressure sufficient to restrain CSXT's Apple Grove-Belpre rate effectively. However, we conclude that this alternative has intangible features sufficient to overcome our preliminary conclusion. M&G leases approximately ██ spots at Belpre for railcar storage, and subsequently ships its stored PET from Belpre to various customer locations either by railcar or after being transloaded into trucks.[267] Aside from the logical incongruity of using a direct truck option when the movement's destination is a railcar storage facility, shipment by railcar from Apple Grove to Belpre provides clear benefits over CSXT's proposed direct truck alternative, in that shipment by railcar avoids the necessity of M&G pre-positioning a significant number of empty railcars at Belpre solely to function as receptacles of the inevitable transload necessitated by direct trucking.[268] Furthermore, as noted above, we have concluded on this record that transportation alternatives involving more than two transloads are not feasible. A direct trucking option for Apple Grove-Belpre movements would necessarily involve two transloads—one at the origin (because Apple Grove has no direct truck loading capability) and one at the destination (because Belpre functions as one of M&G's offsite railcar storage facilities and is not an ultimate customer destination). Given these facts, the proposed direct truck

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(continued...)

sufficient to restrain rates effectively. Given the length of the movement at issue here and the attendant likelihood that delivery to the ultimate destination is not particularly time-sensitive, however, we conclude that such benefits are not sufficient to overcome our preliminary conclusion.

[264] Opening Evidence II-B-59.

[265] Reply Evidence, Exhibit II-B-2 at 1.

[266] Rebuttal Evidence II-B-135.

[267] Opening Evidence II-B-11.

[268] Again, direct trucking generally is thought to provide certain customer-related benefits (e.g., the ability to respond more quickly to customer delivery requests). Under normal circumstances, such benefits might be sufficient to overcome a preliminary conclusion of market dominance in circumstances involving a lowest limit price R/VC ratio that is slightly above a carrier's RSAM figure. Given that Belpre is not an ultimate customer destination, however, such benefits are nonexistent insofar as this particular movement is concerned.

alternative from Apple Grove to Belpre would automatically rule out the possibility of subsequent deliveries of PET from Belpre to M&G customer sites via truck (because such would involve a third transload). As a result, we conclude that CSXT is market dominant with regard to the Apple Grove-Belpre rate.[269]

Apple Grove-Clifton Forge

The Apple Grove-Clifton Forge movement (SL-4) is governed by a single-line rate. On opening, M&G proposes a direct truck alternative.[270] CSXT likewise proposes a direct truck alternative, the price of which is ████.[271] On rebuttal, M&G restates the price of CSXT's direct truck alternative as ████.[272] The price of CSXT's direct truck alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ████████ ████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Clifton Forge rate effectively. However, we conclude that this alternative has intangible features sufficient to overcome our preliminary conclusion. Again, direct trucking generally provides certain customer-related benefits (e.g., the ability to respond more quickly to customer delivery requests). Given that the lowest limit price R/VC ratio for CSXT's proposed direct truck alternative is only slightly above CSXT's RSAM figure, we conclude that such benefits are sufficient to overcome our preliminary conclusion that this alternative does not exert competitive pressure sufficient to restrain the applicable rate effectively. As a result, we conclude that CSXT is not market dominant with regard to the Apple Grove-Clifton Forge rate.

Apple Grove-Devon

The Apple Grove-Devon movement (SL-5) is governed by a single-line rate. On opening, M&G proposes a direct truck alternative.[273] The price of M&G's direct truck alternative is ████. CSXT likewise proposes a direct truck alternative, the price of which is ████.[274] The price of CSXT's direct truck alternative represents the lowest limit price. Thus,

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[269] Because of this conclusion, any alternatives to movements originating in Belpre involving a transload at that location would not implicate the concerns expressed by M&G with respect to proposed alternatives involving more than two transloads.

[270] Id. at II-B-62. We do not indicate or utilize in our analysis a price/limit price for this particular truck alternative given M&G's subsequent restatement of CSXT's direct truck alternative.

[271] Reply Evidence, Exhibit II-B-2 at 2.

[272] Rebuttal Evidence II-B-138.

[273] Opening Evidence II-B-63.

[274] Reply Evidence, Exhibit II-B-2 at 3.

the lowest limit price R/VC ratio for this movement is ███████████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Devon rate effectively, and conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.[275] As a result, we conclude that CSXT is market dominant with regard to the Apple Grove-Devon rate.

Apple Grove-Parkersburg

The Apple Grove-Parkersburg movement (SL-8) is governed by a single-line rate. M&G proposes no alternatives on opening.[276] In reply, CSXT proposes a direct truck alternative.[277] We conclude that the proposed alternative is not feasible. As M&G has explained, the Parkersburg location is a CSXT rail yard, not a customer or a traditional storage/transload facility.[278] Thus, "direct trucking" in this scenario necessarily would involve a transload in Parkersburg. Because Parkersburg is a CSXT-owned facility, M&G contends that it would need CSXT's consent to engage in transloading operations there.[279] While CSXT asserts in response that "M&G has not produced any evidence that CSXT would not consent to truck transloading at Parkersburg,"[280] it does not substantively dispute M&G's assertion.[281] Because the record contains no evidence of a feasible alternative, we conclude that CSXT is market dominant with regard to the Apple Grove-Parkersburg rate.

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[275] Again, direct trucking generally is thought to provide certain customer-related benefits (e.g., the ability to respond more quickly to customer delivery requests). Such benefits might be sufficient to overcome a preliminary conclusion of market dominance in circumstances involving a lowest limit price R/VC ratio that is slightly above a carrier's RSAM figure. However, this particular rate involves a lowest limit price R/VC ratio that is significantly above CSXT's RSAM figure, and we conclude that the customer-related benefits to direct trucking are insufficient to overcome our preliminary conclusion that this alternative does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Devon rate effectively.

[276] Opening Evidence II-B-66.

[277] Reply Evidence, Exhibit II-B-2 at 5.

[278] Opening Evidence II-B-12.

[279] Id.

[280] Reply Evidence, Exhibit II-B-2 at 5. See also id., Exhibit II-B-2 at 11 (stating that M&G "has the ability to truck both to and from Parkersburg" but failing to concede that CSXT would actually allow M&G to do so).

[281] Because we conclude that the proposed alternative is not feasible on this basis, we need not address the concerns expressed by M&G with respect to alternatives that might involve more than two transloads. See Rebuttal Evidence II-B-89.

Apple Grove-Rochester

The Apple Grove-Rochester movement (SL-10) is governed by a single-line rate. On opening, M&G proposes a direct truck alternative.[282] CSXT likewise proposes a direct truck alternative, the price of which is ███.[283] On rebuttal, M&G restates the price of CSXT's direct truck alternative as ███.[284] The price of CSXT's direct truck alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ████████ ████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Rochester rate effectively, and conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.[285] As a result, we conclude that CSXT is market dominant with regard to the Apple Grove-Rochester rate.

Belpre-Apple Grove

The Belpre-Apple Grove movement (SL-11) is governed by a single-line rate.[286] On opening, M&G proposes a direct truck alternative.[287] CSXT likewise proposes a direct truck

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[282] Opening Evidence II-B-68. We do not indicate or utilize in our analysis a price/limit price for this particular truck alternative given M&G's subsequent restatement of CSXT's direct truck alternative.

[283] Reply Evidence, Exhibit II-B-2 at 6.

[284] Rebuttal Evidence II-B-148.

[285] Again, direct trucking generally is thought to provide certain customer-related benefits (e.g., the ability to respond more quickly to customer delivery requests). Such benefits might be sufficient to overcome a preliminary conclusion of market dominance in circumstances involving a lowest limit price R/VC ratio that is slightly above a carrier's RSAM figure. However, this particular rate involves a lowest limit price R/VC ratio that is significantly above CSXT's RSAM figure, and we conclude that the customer-related benefits to direct trucking are insufficient to overcome our preliminary conclusion that this alternative does not exert competitive pressure sufficient to restrain CSXT's Apple Grove-Rochester rate effectively.

[286] As discussed elsewhere, none of the proposed alternatives effectively restrain CSXT's Apple Grove-Belpre rate. See supra pp. 58-59. Likewise, none of the proposed alternatives effectively restrain CSXT's Chicago-Belpre rate. See supra p. 53. CSXT therefore is market dominant as to all of the challenged rates governing movements into Belpre. As a result, alternatives to movements originating in Belpre involving a transload at that location would not implicate the general concerns expressed by M&G with respect to alternatives that might involve more than two transloads.

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alternative, the price of which is ███████.[288] On rebuttal, M&G restates the price of CSXT's direct truck alternative as ██████.[289] The price of CSXT's direct truck alternative represents the lowest limit price. Thus, the lowest limit price R/VC ratio for this movement is ██████████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Belpre-Apple Grove rate effectively, and conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion. Again, direct trucking generally is thought to provide certain customer-related benefits (e.g., the ability to respond more quickly to customer delivery requests). Under normal circumstances, such benefits might be sufficient to overcome a preliminary conclusion of market dominance in circumstances involving a lowest limit price R/VC ratio that is slightly above a carrier's RSAM figure. Given that Apple Grove is not an ultimate customer destination, however, such benefits are nonexistent insofar as this particular movement is concerned. As a result, we conclude that CSXT is market dominant with regard to the Belpre-Apple Grove rate.

Belpre-Devon

The Belpre-Devon movement (SL-14) is governed by a single-line rate.[290] On opening, M&G proposes a direct truck alternative.[291] CSXT likewise proposes a direct truck alternative, the price of which is ██████.[292] On rebuttal, M&G restates the price of CSXT's direct truck alternative as ██████.[293] The price of CSXT's direct truck alternative represents the lowest limit

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(continued...)

[287] Opening Evidence II-B-69. We do not indicate or utilize in our analysis a price/limit price for this particular truck alternative given M&G's subsequent restatement of CSXT's direct truck alternative.

[288] Reply Evidence, Exhibit II-B-2 at 8.

[289] Rebuttal Evidence II-B-152.

[290] As discussed elsewhere, none of the proposed alternatives effectively restrain CSXT's Apple Grove-Belpre rate. See supra pp. 58-59. Likewise, none of the proposed alternatives effectively restrain CSXT's Chicago-Belpre rate. See supra p. 53. CSXT therefore is market dominant as to all of the challenged rates governing movements into Belpre. As a result, alternatives to movements originating in Belpre involving a transload at that location would not implicate the concerns expressed by M&G with respect to alternatives that might involve more than two transloads. See Rebuttal Evidence II-B-89.

[291] Opening Evidence II-B-72. We do not indicate or utilize in our analysis a price/limit price for this particular truck alternative given M&G's subsequent restatement of CSXT's direct truck alternative.

[292] Reply Evidence, Exhibit II-B-2 at 9.

[293] Rebuttal Evidence II-B-155.

price. Thus, the lowest limit price R/VC ratio for this movement is ███████████ above CSXT's 293% RSAM figure. We therefore preliminarily conclude that the alternative with the lowest limit price does not exert competitive pressure sufficient to restrain CSXT's Belpre-Devon rate effectively, and conclude that this alternative has no intangible features sufficient to overcome our preliminary conclusion.[294] As a result, we conclude that CSXT is market dominant with regard to the Belpre-Devon rate.

Parkersburg-Apple Grove

The Parkersburg-Apple Grove movement (SL-17) is governed by a single-line rate. M&G proposes no alternatives on opening.[295] In reply, CSXT proposes a direct truck alternative.[296] We conclude that the proposed alternative is not feasible. As M&G has explained, the Parkersburg location is a CSXT rail yard, not a customer or a traditional storage/transload facility.[297] Thus, "direct trucking" in this scenario necessarily would involve a transload in Parkersburg. Because Parkersburg is a CSXT-owned facility, M&G contends that it would need CSXT's consent to engage in transloading operations there.[298] While CSXT asserts in response that "M&G has not produced any evidence that CSXT would not consent to truck transloading at Parkersburg,"[299] it does not substantively dispute M&G's assertion.[300] Because the record contains no evidence of a feasible alternative, we conclude that CSXT is market dominant with regard to the Parkersburg-Apple Grove rate.

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[294] Again, direct trucking generally is thought to provide certain customer-related benefits (e.g., the ability to respond more quickly to customer delivery requests). Such benefits might be sufficient to overcome a preliminary conclusion of market dominance in circumstances involving a lowest limit price R/VC ratio that is slightly above a carrier's RSAM figure. However, this particular rate involves a lowest limit price R/VC ratio that is significantly above CSXT's RSAM figure, and we conclude that the customer-related benefits to direct trucking are insufficient to overcome our preliminary conclusion that this alternative does not exert competitive pressure sufficient to restrain CSXT's Belpre-Devon rate effectively.

[295] Opening Evidence II-B-75.

[296] Reply Evidence, Exhibit II-B-2 at 11.

[297] Opening Evidence II-B-12.

[298] Id.

[299] Reply Evidence, Exhibit II-B-2 at 5. See also id., Exhibit II-B-2 at 11 (stating that M&G "has the ability to truck both to and from Parkersburg" but failing to concede that CSXT would actually allow M&G to do so).

[300] Because we conclude that the proposed alternative is not feasible on this basis, we need not address the concerns expressed by M&G with respect to alternatives that might involve more than two transloads. See Rebuttal Evidence II-B-89.