I. <u>INTRODUCTION</u>

My name is Thomas D Crowley I am an economist and the President of L E Peabody &
Associates, Inc , an economic consulting firm that specializes in solving economic, transportation,
marketing, and fuel supply problems I have spent most of my consulting career of over thirty-seven
(37) years evaluating fuel supply issues and railroad operations, including railroad costs, accounting,
prices, financing, cost of capital, capacity and equipment planning issues My assignments in these
matters were commissioned by railroads, producers, and shippers of different commodities A copy
of my credentials is included as Exhibit No 1 to this verified statement

I have been requested by Counsel for Interested Parties to address certain issues arising from
the Surface Transportation Board's ("STB") decision in Ex Parte No 646 (Sub No 2), *Simplified
Standards For Rail Rate Cases – Taxes In Revenue Shortfall Allocation Methodology*, served June
27, 2008 ("*646 (Sub-No 2)*") Specifically, Counsel for the Interested Parties has requested that I
address the following questions raised by the STB (1) Does the fact that the STB's Uniform
Railroad Costing System ("URCS") over-recovers railroad tax costs make an adjustment to the
STB's Revenue Shortfall Allocation Methodology ("RSAM"), and subsequently to the Revenue
Adequacy Adjustment Factor used in the STB's Three Benchmark Maximum Reasonable Rate
Methodology, unnecessary? and (2) If a tax adjustment is made to the RSAM calculation, should
it be made using a railroad's effective tax rate?

As I discuss in greater detail below, my analysis of publicly available data infers that an
adjustment to the RSAM ratio to account for taxes is not necessary Additionally, if the STB does
choose to make a tax adjustment to the RSAM ratio, it should use each railroad's effective tax rate

instead of the statutory tax rate   To do otherwise would over compensate the railroads for costs they

did not incur

My testimony is discussed further below under the following topical headings

II   Tax Adjustments To RSAM

III. Effective Tax Rates

II. TAX ADJUSTMENTS TO RSAM

As I explained in my Reply VS in *E I DuPont de Nemours and Co v CSX Transportation, Inc*, STB Docket Nos 42099, 42100, and 42101 ("*DuPont*"), the STB's URCS model includes a variable return on investment ("ROI") component calculated using a pre-tax weighted-average cost of capital ("WACC") based on the federal statutory tax rate of 35 percent [1] The use of the pre-tax WACC in the variable ROI, which adjusts the cost of equity to allow for a return to common equity holders from after-tax earnings, explicitly adds additional variable costs to each movement to cover the railroad's tax burden However, railroads seldom pay taxes at the statutory rate due to offsets and credits, and their actual tax expenses are much lower than implied by the statutory rate Therefore, using a statutory tax rate in the URCS model leads to an overstatement in each movement's variable costs

This overstatement in URCS variable costs directly impacts the STB's RSAM and $R/VC_{>180}$ ratios used in the Three Benchmark methodology ("Revenue Adequacy Adjustment Factor")[2] by limiting the size in dollar terms of the captive shipper group ("$REV_{>180}$") Any change in the $Rev_{>180}$ has a direct impact on the Revenue Adequacy Adjustment Factor since, in its simplest form, the adjustment factor is equal to one (1) plus the a railroad's revenue shortfall (or overage) shown in the STB's annual revenue adequacy determination ("$REV_{short/over}$") divided by its $REV_{>180}$ [3] If the STB were to calculate a railroad's URCS variable costs using a pre-tax WACC taking into consideration

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[1]   See, for example, Crowley Reply VS in Docket No NOR 42099 at 35

[2]   As used in this verified statement, RSAM ÷ R/VC >180 = Revenue Adequacy Adjustment Factor

[3]   Dividing a railroad's RSAM ratio by its Captive Traffic Revenue to Variable Cost Ratio ("$R/VC_{>180}$") simplifies down to the following equation 1+ ($REV_{short/over}$ ÷ $REF_{>180}$) = Revenue Adequacy Adjustment Factor

effective tax rates instead of a statutory tax rate, the size of the $REV_{>180}$ traffic group would most likely be larger, and produce a more accurate Revenue Adequacy Adjustment Factor

A question raised by the STB in its *646 (Sub-No 2)* decision is whether the treatment of taxes in the URCS model makes adjustments to the RSAM, and subsequently the Revenue Adequacy Adjustment Factor, unnecessary? [4]

To fully answer this question would require re-costing the STB's Carload Waybill Sample using URCS Phase III models adjusted to use each railroad's effective tax rate in determining variable ROI instead of the statutory tax rate currently used If this re-costing took place, the difference in the $REV_{>180}$ traffic groups before and after the tax adjustment in the URCS model could be identified However, since the STB's rules do not permit the general release of the Carload Waybill Sample, this direct solution is unavailable at this time An indirect estimate of the impact can be developed, though, through the use of publicly available data from the STB's workpapers used to calculate its RSAM ratios [5]

As explained above, URCS overstates each movement's variable costs due to its determination of variable ROI using a statutory 35% tax rate instead of a railroads' actual effective tax rate To determine the extent of this overstatement, I have extracted the variable ROI calculated using the statutory tax rate of 35% from each railroad's URCS model, and recalculated the variable ROI using each railroad's effective tax rate for the years 2000 through 2003 [6] I then subtracted the

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[4] See *646 (Sub-No 2)* at 3

[5] These STB workpapers were used in the original small shipper maximum reasonable rate methodologies created in STB Ex Parte 347 (Sub-No 2), *Rate Guidelines – Non-Coal Proceedings (' 347 (Sub-No 2")* plus the STB's annual revenue adequacy workpapers and plus each Class 1 railroad's URCS costs and tax expense data

[6] I choose the 2000 through 2003 time frame since the STB's *347 (Sub-No 2)* RSAM workpapers are publicly available for this period The STB did not make its workpapers for 2004 or 2005 publicly available As I discuss below, data contained in the STB's *347 (Sub-No 2)* workpapers is necessary to the analysis

variable ROI calculated under each method to quantify URCS's over recovery of taxes for each

railroad Finally, I divided this difference by each railroad's total URCS variable costs to determine

the overstatement as a percentage of total costs

Table 1 below shows the percentage over statement by railroad for the years 2000 through

2003.

Table 1				
URCS Over-Statement Of Variable Cost As A Percentage Of Total Costs – 2000 to 2003				
Railroad (1)	2000 (2)	2001 (3)	2002 (4)	2003 (5)
1 BNSF Railway Company	3 4%	4 0%	4 7%	4 7%
2 CSX Transportation	6 2%	4 8%	5 3%	6 3%
3 Grand Trunk Corporation	1 2%	6 3%	15 9%	8 4%
4 Kansas City Southern Railway Company	9 2%	7 5%	7 2%	4 5%
5 Norfolk Southern Combined Subsidiaries	1 7%	1 9%	2 9%	2 9%
6 Soo Line Railroad Company	5 9%	7 0%	6 0%	4 0%
7 Union Pacific Railroad	5 3%	4 1%	4 4%	3 9%

Source Exhibit No 2

As shown in Table 1 above, URCS variable costs for each Class I railroad is overstated due to

its use of the statutory tax rate These overstatements range between 1 2 percent and 15 9 percent

I next used the average overstatement in URCS for each railroad shown in Table 1 to estimate the magnitude of the understatement in each railroad's average R/VC for each year As the STB explained in its *646 (Sub-No 2)* decision, an over-statement in URCS variable costs will lead to an under-statement in the R/VC for each movement [2] Under-stated R/VC will subsequently lead to an under-statement in the dollar value of the $REV_{>180}$, which has a direct impact on the Revenue Adequacy Adjustment Factor

To estimate the size of the understatement on the average R/VC for each railroad, I utilized $REV_{>180}$ and $VC_{>180}$ data from the STB's *347 Sub-No 2* RSAM workpapers, and the percentage over-statement in URCS variable costs from Table 1 above Specifically, for each railroad and each year 2000 through 2003, I adjusted the $VC_{>180}$ to remove the impact of the over-statement in URCS due to the over-recovery of taxes, and calculated an adjusted $R/VC_{>180}$ using each railroad's $Rev_{>180}$ and adjusted $VC_{>180}$ I then found the difference between each railroad's $R/VC_{>180}$ calculated with variable costs using a statutory tax rate and its adjusted $R/VC_{>180}$ based on each railroad's effective tax rate I assumed for this analysis that the difference between the two $R/VC_{>180}$ calculations for each railroads is reflective of the difference in R/VC for every movement on that particular railroad for that year [3] Table 2 below contains the estimated differences in $R/VC_{>180}$ calculated using URCS with a statutory tax rate and each railroad's effective tax rate.

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[2]   See *646 (Sub-No 2)* at 3

[3]   For example, if the difference between the $R/VC_{>180}$ and the revised $R/VC_{>180}$ is 9 percentage points, I assume all R/VC for that railroad in that year are overstated by 9 percent Therefore, if a movement has an R/VC of 171 percent using the statutory URCS variable costs, it will have an R/VC of 180 percent using an URCS variable costs calculated with the railroad's effective tax rate

Table 2

Estimated Differences In R/VC$_{>180}$ – 2000 to 2003

Railroad	2000	2001	2002	2003
(1)	(2)	(3)	(4)	(5)
1 BNSF Railway Company	8%	10%	12%	11%
2 CSX Transportation	16%	12%	13%	16%
3 Grand Trunk Corporation	3%	18%	51%	22%
4 Kansas City Southern Railway Company	26%	21%	20%	13%
5 Norfolk Southern Combined Subsidiaries	4%	5%	8%	7%
6 Soo Line Railroad Company	13%	17%	14%	9%
7 Union Pacific Railroad	13%	10%	11%	10%

Source Exhibit No 3

As I show in Table 2 above, the differences in R/VC$_{>180}$ from using an URCS incorporating a statutory tax rate and an URCS using each railroad's effective tax rate ranges from 4 percent to 51 percent

Next, I utilized the differences in the R/VC$_{>180}$ ratios discussed above, along with data from the STB's *347 (Sub-No 2)* workpapers, to estimate the additional REV$_{>180}$ for each carrier assuming URCS variable costs were calculated using effective tax rates The STB's *347 (Sub-No 2)* workpapers separate each carrier's revenues and variable costs into one of three categories (1) movements with R/VC greater than or equal to 180 percent, (2) movements with the R/VC greater than 100 percent and less than 180 percent, and (3) movements with R/VC less than 100 percent I

assumed, for purposes of this estimate, that the R/VC and revenues for each movement in the middle category, i e , R/VC between 100% and 180%, had a uniform distribution In other words, revenues were evenly distributed across the R/VC range Combining this assumption along with the estimated difference in R/VC due to the over recovery of taxes in the URCS variable costs, I was able to estimate the amount of revenue that would shift from the R/VC 100-180 percent category to the $REV_{>180}$ group, assuming URCS were calculated using effective tax rates in lieu of statutory tax rates

This estimate of a revised $REV_{>180}$ allowed me to test the impact on the Revenue Adequacy Adjustment Factor assuming a correction in URCS variable costs and the incorporation of a tax adjustment to the $REV_{short/overage}$ Using unadjusted $REV_{short/overage}$ and unadjusted $REV_{>180}$, I calculated the Revenue Adequacy Adjustment Factor for each railroad for 2000 through 2003 [9] I then calculated a revised Revenue Adequacy Adjustment Factor for each railroad over the same time period using the adjusted $REV_{>180}$ discussed above and a $REV_{short/overage}$ adjusted to reflect the impact of taxes at each railroad's effective tax rate Table 3 below compares the adjusted and unadjusted Revenue Adequacy Adjustment factors for each railroad

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[9] In a few limited cases in 2002 and 2003, the unadjusted Revenue Adequacy Adjustment Factors calculated using data from the STB's *347 (Sub-No 2)* workpapers produce different results than Revenue Adequacy Adjustment Factors produced from data contained in the STB's December 20, 2007 *347 (Sub-No 2)* decision, in which the STB calculated RSAM under the new *Ex Parte 646* procedures These differences appear in 2002 for the CN/GTW and for CP/SOO, and in 2003 for CP/SOO I attribute these differences to changes the STB made in the underlying waybill sample data, which I believe do not materially impact this analysis

Table 3

Comparisons of Revenue Adequacy Adjustment Factors – 2000 to 2003

Railroad	2000		2001		2002		2003	
	Unadj	Adj	Unadj	Adj	Unadj	Adj	Unadj	Adj
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1 BNSF Railway Company	117%	116%	128%	125%	131%	124%	121%	118%
2 CSX Transportation	130%	121%	126%	121%	121%	116%	123%	115%
3 Grand Trunk Corporation	146%	160%	140%	129%	207%	132%	145%	133%
4 Kansas City Southern Railway Company	140%	111%	134%	113%	125%	112%	144%	134%
5 Norfolk Southern Combined Subsidiaries	128%	135%	109%	110%	102%	103%	101%	101%
6 Soo Line Railroad Company	206%	173%	196%	158%	142%	135%	130%	127%
7 Union Pacific Railroad	135%	125%	120%	117%	106%	106%	112%	111%

Source Exhibit No 4

As Table 3 above shows, in almost all instances, the Revenue Adequacy Adjustment Factor revised to account for the overstatement in URCS costs and for taxes on the $REV_{short/overage}$ is lower than or equal to the unadjusted Revenue Adequacy Adjustment Factor

As I indicated above, a true test of the impact of taxes on the Revenue Adequacy Adjustment Factor would require use of confidential data held by the STB However, the above analysis infers that the overstatement of taxes in the URCS variable costs makes the tax adjustment in the RSAM adjustment factor unnecessary

III. EFFECTIVE TAX RATES

In Ex Parte No 646 (Sub No 1), *Simplified Standards For Rail Rate Cases*, served July 26, 2006 ("*Ex Parte 646*"), the Board changed the way the RSAM benchmark is calculated to address a flaw in that calculation Under the STB's revised RSAM formula, the STB uses its confidential Carload Waybill Sample to estimate the $REV_{>180}$ and the $VC_{>180}$ and $REV_{short/overage}$ from its annual revenue adequacy determination to estimate each railroad's RSAM The STB's revised RSAM formula is a follows

$$RSAM = (REV_{>180} + REV_{short/overage}) - VC_{>180}$$

In *DuPont*, CSX Transportation, Inc ("CSXT") asserted that the STB's RSAM calculation was flawed [10] CSXT claimed that the STB's *Ex Parte 646* RSAM procedures should have adjusted the $REV_{short/over}$ component of the RSAM ratio to account for income taxes attributable to the additional revenue required to make a railroad revenue adequate Specifically, CSXT believed the correct procedure for developing the Revenue Adequacy Adjustment Factor required dividing the difference between the RSAM and $R/VC_{>180}$ ratios by one less the railroad's statutory federal and state income tax rates, and adding the resultant quotient to the $R/VC_{>180}$ ratio [11] According to CSXT, this

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[10]   See *646 (Sub-No 2)* at 2

[11]   CSXT's logic was that the $REV_{short/over}$ component in the RSAM ratio is calculated based on after-tax earnings, and a straight application of the component to the $R/VC_{>180}$ ratio, which is based on pre-tax revenues, would leave a railroad below a revenue adequate level

adjustment produces a tax-adjusted RSAM ratio, and tax adjusted Revenue Adequacy Adjustment Factor [12]

To address CSXT's claims in *DuPont* regarding the need to adjust the RSAM ratio for taxes, the STB, in its *646 (Sub-No 2)* decision, asked the parties to address the issue that if a tax adjustment to the RSAM calculation is appropriate, should the adjustment be based on a statutory, an effective or a marginal tax rate?[13]

As I explain below, statutory tax rates should not be used as a basis for an adjustment for the simple fact that railroad tax payments are significantly different than taxes due under a straight application of statutory rates Moreover, railroad effective tax rates should not be expected to reach statutory rate levels absent a large scale change in tax accounting regulations and/or a dramatic shift in railroad investment patterns Therefore, any adjustment of the RSAM calculations using statutory tax rates will provide a windfall for the railroads

A EFFECTIVE, MARGINAL AND STATUTORY TAX RATES

Any adjustment based on a statutory tax rate will lead to an overstatement in required revenues for a railroad to reach revenue adequacy due to the fact that railroads have historically paid taxes at rates less than that dictated by statutory tax rates The effective tax rate is the amount of tax an individual or firm pays when all other government tax offsets or payments are applied, divided by

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[12] CSXT's proposed process of adjusting for taxes by dividing the difference in the RSAM and R/VC $_{>180}$ is mathematically equivalent to adjusting the REV$_{adj/overage}$ for taxes

[13] See *646 (Sub-No 2)* at 3

the tax base Class I railroad R-1 data filed with the STB clearly shows that each railroad's effective

Federal tax rate does not equal the statutory Federal tax rate   Table 4 below displays each Class I

railroad's effective Federal tax rates for the years 2002 through 2007 [14]

Table 4								
Class I Railroad Effective Tax Rates – 2002 to 2007								
Railroad (1)	2000 (2)	2001 (3)	2002 (4)	2003 (5)	2004 (6)	2005 (7)	2006 (8)	2007 (8)
1 BNSF Railway Company	15 9%	16 1%	7 5%	6 4%	20 7%	27 4%	25 0%	27 0%
2 CSX Transportation	(19 4%)	(3 3%)	(4 5%)	(23 6%)	2 0%	22 9%	25 3%	23 6%
3 Grand Trunk Corporation	28 3%	(11 6%)	(55 3%)	3 8%	(3 0%)	20 3%	22 1%	18 2%
4 Kansas City Southern Railway Company	(99 9%)	(45 9%)	(37 0%)	0 0%	20 4%	(14 5%)	1 32%	0 0%
5 Norfolk Southern Combined Subsidiaries	25 1%	20 6%	12 1%	10 6%	12 8%	22 7%	26 6%	25 1%
6 Soo Line Railroad Company	(3 3%)	2 9%	7 4%	10 5%	21 1%	2 7%	18 4%	16 8%
7 Union Pacific Railroad	2 5%	10 6%	9 1%	12 13%	(9 5%)	22 9%	27 7%	26 1%

Source Exhibit No 5

As shown in Table 4 above, the railroads' actual tax expenses have not resulted in effective tax

rates at the statutory 35% Federal level   In all cases between 2002 and 2007, the railroads paid less

in Federal taxes than would be expected if a straight application of the Federal 35% statutory rate

were applied What is especially striking is in 2007, during a year in which the railroads earned

record profits as part of their euphemistically named "railroad renaissance," not one railroad was

[14]   I have calculated the effective Federal tax rate since it is applicable to each railroad and easily comparable to the
Federal statutory rate of 35%

within eight (8) percentage points of the statutory 35% Federal Tax rate   Moreover, several

railroads not only did not incur any federal tax expenses in several years between 2002 and 2007,

but actually booked tax refunds producing negative effective tax rates

While it is clear that railroads' effective tax rates are below the statutory level, it is unclear that

their marginal tax rates are also below statutory levels, since its not possible to calculate their

effective marginal tax rates with the information filed with the STB   A marginal tax rate is the tax

rate that applies to the last dollar of the tax base, and often applied to the change in tax obligations

as income rises   In this instance, the REV$_{short/over}$ dollars added to the Revenue$_{>180}$ while holding all

else constant, would be considered marginal revenue   In the *DuPont* cases, CSXT assumed that this

revenue would be taxed at the statutory rate   However, it is not possible to calculate the actual impact

of taxes on this additional revenue with generally available financial data   Rather, to effectively

calculate the impact of the additional revenue would require a complete set of railroad income tax

returns.   Without this data, the tax impact, if any, associated with the additional revenue cannot be

determined

If the STB were to accept the argument that the REV$_{short/over}$ component of the RSAM ratio

required a tax adjustment, the only logical tax rate to use for the adjustment based upon publicly

verifiable information is each railroad's effective tax rate for each year   The use of effective tax

rates reflects the fact that a railroad does not incur tax expenses at the statutory rate, and would

therefore provide an adjustment consistent with   each railroad's actual tax position   To use a

statutory rate would over-compensate the railroads for expenses they did not incur

If the STB were to make a tax adjustment to the RSAM ratio, the adjustment should be made

based upon each individual railroad's effective tax rate and not an effective tax rate for the industry

as whole The use of an industry average tax rate would over or under-compensate a railroad and/or shipper using the Three Benchmark Methodology if the railroad's actual effective tax rate differed from the industry average If, for example, a railroad's effective tax rate were below the industry average effective tax rate, the use of the industry average rate in an adjusted RSAM ratio would over-state the Revenue Adequacy Adjustment Factor leading to an over-stated maximum reasonable rate

The STB calculates RSAM and $R/VC_{>180}$ for each railroad using railroad specific data There is no reason the STB should not also use railroad specific effective tax rates if the STB does choose to make a tax adjustment to the RSAM ratio [15]

B. TIMING DIFFERENCES ARE NOT A REASON TO USE A STATUTORY TAX RATE INSTEAD OF AN EFFECTIVE TAX RATE

There are a number of factors that can drive a firm's effective tax rate below its statutory tax rate These factors include, but are not limited to, the impact of deferred income taxes, tax-loss carryforwards and carrybacks and governmental tax credits [16] CSXT confirmed this fact in its

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[15] Since the STB limits the use of the Three Benchmark Methodology to Class I carriers, there would also not be a reason to calculate a western region or eastern region effective tax rate in a similar fashion that the STB calculates western and eastern region URCS variable costs

[16] For example, the railroad industry, through the Association of American Railroads, is lobbying for the passage of the Freight Rail Infrastructure Expansion Act This act would provide a 25-percent investment tax credit to railroads and other companies that invest in freight rail infrastructure A tax credit is a direct reduction in a company's taxes payable, and offers greater benefits than a tax deduction See http //www trafficworld com/newssection/rail asp?id=47249

-15-

Rebuttal Evidence in the _DuPont_ cases [17] Of these factors, the one with the greatest impact across all the Class I Railroads is deferred income taxes

Deferred taxes result because there is a difference between what a company can deduct for tax accounting purposes and what it can deduct for financial accounting purposes This difference in tax and financial accounting results in a difference between a company's taxable income and income before taxes To reflect this difference in financial and tax accounting treatment of taxes, companies record the difference on their Balance Sheets as a non-current or long-term liability As such, the amounts included in this liability are not expected to be paid in the current accounting period

Transactions that most often result in deferred taxes are investments in depreciable capital assets The Internal Revenue Service ("IRS") allows for the use of an accelerated cost recovery system, Modified Accelerated Cost Recovery System ("MACRS"), in the calculation of federal income taxes MACRS depreciation schedules allow a company to deduct greater amounts of depreciation during the earlier years of an asset's life The result of using MACRS lowers the taxable income through the inclusion of higher depreciation expense amounts than would be available under financial accounting standards. The future tax liability caused by the tax savings resulting from MACRS may or may not be realized during any given year, which makes the deferred status appropriate

The position that statutory tax rates should always be used since the impact of deferred taxes is only a timing issue ignores the capital intensive nature of the railroad industry Deferred taxes are a self perpetuating situation because as long as railroads invest in depreciable assets and the tax

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rules regarding accelerated depreciation do not change, there will always be a differential between a railroad's accounting and IRS based tax liabilities

The amount of deferred tax liability recognized in a railroad's Balance Sheet will only become payable when the railroad substantially lowers its level of capital investment or ceases to invest in its plant for a number of years As long as railroads continue to invest in capital assets at reasonably stable levels, they will continue to incur deferred tax liabilities that will lower their effective tax rates Unless the management of the Class I railroads change their investment philosophy of upgrading and improving the railroad's infrastructure in future years, a similar level of deferred tax credits can be expected to occur in the future

The Class I railroads have repeatedly stated that they expect to invest even more in the future in their physical plant infrastructure This continued investment will produce additional deferred tax liabilities through accelerated depreciation, and continue to produce effective tax rates well below the statutory levels

C. INCREMENTAL REVENUES FROM THE RSAM ADJUSTMENT WILL HAVE A MULTI-YEAR IMPACT

Any additional revenues that a railroad receives through the adjustment of the RSAM ratio for taxes would be recorded in the period when the revenue was earned This does not mean, though, that this additional revenue has no impact on future tax liabilities and future effective tax rates A railroad's taxes are based on impacts of revenues and costs from multiple years. The revenues received as a result of the RSAM calculation will be used to some extent by a railroad's management

for capital investment in depreciable assets which in turn will generate tax credits that will protect a portion of future railroad revenues from income taxes. IRS rules on depreciation will generate extensive tax benefits to a railroad for capital investments made using the additional revenues attributable to the RSAM adjustment Simply stated, any revenues received from the RSAM revenue adjustment can be expected to be used on additional capital investments, which will generate additional deferred taxes

Any inclusion of the statutory tax rate in the Revenue Adequacy Adjustment Factor further penalizes the shippers that will have to pay increased rail rates as a result of the RSAM procedure, while the railroad will garner the benefits of reduced actual tax payments in future years through the capital investments made with RSAM derived revenues

The STB's RSAM procedure recognizes the short-comings of basing rate calculations on a single year, which is evidenced by its incorporation of a four year rolling average in RSAM calculations The issues of after-tax revenues, capital investments and actual tax liabilities are interrelated and are best viewed on a multiple year basis After-tax revenues and the actual tax liability of a railroad are directly related to its investment philosophy in capital assets The use of the RSAM revenues for capital investment will directly impact the actual taxes paid by a railroad for a number of years in the future through the inclusion of accelerated depreciation This in turn will reduce a railroad's actual taxes paid in a number of future years In essence, the incremental revenues produced by the RSAM revenue adjustment will generate tax deductions through the depreciation of investments and reduce taxes through deferred taxes, unless the railroad directly distributes the cash to company shareholders in a lump-sum whole

The STB recognizes the differences that result between its accounting regulations and those of the IRS in regard to income before taxes and taxable income through the inclusion of deferred income tax liabilities on a railroad's Balance Sheet To increase the RSAM revenues by the statutory tax rate gives railroads a double windfall First, the railroads will receive incremental revenues from the RSAM adjustment based on a statutory tax rate, yet will pay the effective tax rate on these incremental revenues when they are received and included as a part of the railroad's total operating revenues Second, the portion of the RSAM revenues that is used for capital investments in depreciable assets will generate future tax credits that will reduce the actual taxes paid by the railroad on future revenues As stated above, deferred taxes will continue to accrue to the railroad as long as it invests in its plant infrastructure This will lead to an effective tax rate below the statutory tax rate, and a windfall to the railroad if the RSAM adjustment factor is calculated using a statutory tax rate

LIST OF EXHIBITS

Exhibit No.	Description
(1)	(2)
1	Thomas D Crowley Statement Of Qualifications
2	Railroad Over-Recovery Of Taxes In URCS
3	Estimated Change In R/VC Ratios Due To Over-Recovery Of Taxes In URCS Variable Costs -- 2000 to 2003
4	Revenue Adequacy Adjustment Factor Revised For Taxes And Overstated URCS Costs -- 2000 to 2003
5	Class I Railroad Effective Federal Tax Rates -- 2000 to 2007

STATEMENT OF QUALIFICATIONS

My name is Thomas D Crowley I am an economist and President of the economic consulting firm of L E Peabody & Associates, Inc The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, and 10445 N Oracle Road, Suite 151, Tucson, Arizona 85737

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics I have also taken graduate courses in transportation at George Washington University in Washington, D C I spent three years in the United States Army and since February 1971 have been employed by L E Peabody & Associates, Inc

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering and Maintenance-of-Way Association

The firm of L E Peabody & Associates, Inc specializes in analyzing matters related to the rail transportation of coal As a result of my extensive economic consulting practice since 1971 and my participating in maximum-rate, rail merger, service disputes and rule-making proceedings before various government and private governing bodies, I have become thoroughly familiar with the rail carriers that move coal over the major coal routes in the United States This familiarity extends to subjects of railroad service, costs and profitability, railroad capacity, railroad traffic prioritization and the structure and operation of the various contracts and tariffs that historically have governed the movement of coal by rail

STATEMENT OF QUALIFICATIONS

As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States The nature of these studies enabled me to become familiar with the operating practices and accounting procedures utilized by railroads in the normal course of business

Additionally, I have inspected and studied both railroad terminal and line-haul facilities used in handling various commodities, and in particular unit train coal movements from coal mine origins in the Powder River Basin and in Colorado to various utility destinations in the eastern, mid-western and western portions of the United States and from the Eastern coal fields to various destinations in the Mid-Atlantic, northeastern, southeastern and mid-western portions of the United States These operational reviews and studies were used as a basis for the determination of the traffic and operating characteristics for specific movements of coal and numerous other commodities handled by rail

STATEMENT OF QUALIFICATIONS

I have frequently been called upon to develop and coordinate economic and operational studies relative to the acquisition of coal and the rail transportation of coal on behalf of electric utility companies My responsibilities in these undertakings included the analyses of rail routes, rail operations and an assessment of the relative efficiency and costs of railroad operations over those routes I have also analyzed and made recommendations regarding the acquisition of railcars according to the specific needs of various coal shippers The results of these analyses have been employed in order to assist shippers in the development and negotiation of rail transportation contracts which optimize operational efficiency and cost effectiveness

I have developed property and business valuations of privately held freight and passenger railroads for use in regulatory, litigation and commercial settings These valuation assignments required me to develop company and/or industry specific costs of debt, preferred equity and common equity, as well as target and actual capital structures I am also well acquainted with and have used the commonly accepted models for determining a company's cost of common equity, including the Discounted Cash Flow Model ("DCF"), Capital Asset Pricing Model ("CAPM"), and the Farma-French Three Factor Model

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the Interstate Commerce Commission ("ICC") and the Surface Transportation Board ("STB") for the development of variable costs for common carriers, with particular emphasis on the basis and use of the Uniform Railroad Costing System ("URCS") and its predecessor, Rail

STATEMENT OF QUALIFICATIONS

Form A   I have utilized URCS/Rail form A costing principles since the beginning of my career with L E Peabody & Associates Inc in 1971

I have frequently presented both oral and written testimony before the ICC, STB, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts   This testimony was generally related to the development of variable cost of service calculations, rail traffic and operating patterns, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations or damages, including interest   I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States   I have also presented expert testimony in a number of court and arbitration proceedings concerning the level of rates, rate adjustment procedures, service, capacity, costing, rail operating procedures and other economic components of specific contracts

Since the implementation of the _Staggers Rail Act of 1980_, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of coal shippers. Specifically, I have advised utilities concerning coal transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate adjustment provisions, contract

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reopeners that recognize changes in productivity and cost-based ancillary charges I have also reviewed, analyzed and evaluated both UP's Circular 111 and BNSF 90068 rate levels and other terms and conditions on behalf of coal shippers

I have been actively engaged in negotiating coal supply contracts for various users throughout the United States In addition, I have analyzed the economic impact of buying out, brokering, and modifying existing coal supply agreements   My coal supply assignments have encompassed analyzing alternative coals to determine the impact on the delivered price of operating and maintenance costs, unloading costs, shrinkage factor and by-product savings

I have developed different economic analyses regarding rail transportation matters for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, Coal Exporters Association, Edison Electric Institute, Mail Order Association of America, National Coal Association, National Industrial Transportation League, North America Freight Car Association, the Fertilizer Institute and Western Coal Traffic League In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various transportation-related problems

In the two Western rail mergers that resulted in the creation of the present BNSF Railway Company and Union Pacific Railroad Company and in the acquisition of Conrail by Norfolk Southern Railway Company and CSX Transportation, Inc , I reviewed the railroads' applications

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including their supporting traffic, cost and operating data and provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed mergers and acquisition In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers

I have participated in various proceedings involved with the division of through rail rates For example, I participated in ICC Docket No. 35585, *Akron. Canton & Youngstown Railroad Company, et al v Aberdeen and Rockfish Railroad Company, et al* which was a complaint filed by the northern and mid-western rail lines to change the primary north-south divisions I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and mid-western rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No 36874, *Notice of Intent to File Division Complaint by the Long Island Rail Road Company*

Railroad Over-Recovery Of Taxes In URCS

(All Dollars in 000's)

Railroad (1)	Total URCS Variable Cost At Statutory Tax Rate 1/ (2)	Variable ROI At Statutory Tax Rate 2/ (3)	Variable ROI At Railroad Specific Effective Tax Rates 3/ (4)	Over-Recovery Of Taxes 4/ (5)	Over-Recovery As a % of Total URCS Variable Costs 5/ (6)
2000					
1 BNSF	$6,649,357	$1,317,967	$1,089,520	$228,447	3 4%
2 CSX	$4,698,669	$839,313	$548,350	S290,963	6 2%
3 CN/GTW/IC 6/	$755,885	$136,194	$126,840	S9,354	1 2%
4 KCS	$355,867	$63,304	$30,709	$32,595	9 2%
5 NS	$5,016,179	$753,174	$667,707	$85,467	1 7%
6 CP/SOO	$395,933	$83,861	$60,380	$23,481	5 9%
7 UP	$7,967,180	$1,665,877	$1,243,356	$422,521	5 3%
2001					
8 BNSF	$6,954,013	$1,319,353	$1,039,437	$279,916	4 0%
9 CSX	$4,917,609	$804,234	$570,379	$233,855	4 8%
10 CN/GTW/IC 6/	$630,656	$118,526	$79,019	$39,507	6 3%
11 KCS	$388,382	$65,836	$36,887	$28,949	7 5%
12 NS	$4,615,590	$630,209	$540,817	$89,392	1 9%
13 CP/SOO	$406,049	$91,987	$63,423	$28,564	7 0%
14 UP	$7,982,879	$1,540,193	$1,212,493	$327,700	4 1%
2002					
15 BNSF	$6,772,385	$1,287,230	$967,772	$319,458	4 7%
16 CSX	$4,677,276	S792,545	$543,792	$248,753	5 3%
17 CN/GTW	$1,055,130	$354,176	$186,136	$168,040	15 9%
18 KCS	$385,068	$64,622	$36,792	$27,830	7 2%
19 NS	$4,478,055	S620,907	$489,475	S131,432	2 9%
20 CP/SOO	$390,864	$81,992	$58,644	$23,348	6 0%
21 UP	$7,874,687	S1,491,212	$1,142,900	$348,312	4 4%
2003					
22 BNSF	$7,057,936	$1,284,422	$956,074	$328,348	4 7%
23 CSX	$4,938,274	$779,742	$469,018	$310,724	6 3%
24 CN/GTW	$1,133,842	$349,404	S253,731	$95,673	8 4%
25 KCS	$408,302	$63,083	$44,585	$18,498	4 5%
26 NS	$4,678,575	$606,751	S469,890	$136,861	2 9%
27 CP/SOO	$422,977	$74,536	$57,724	$16,812	4 0%
28 UP	$8,316,739	$1,493,912	$1,168,172	$325,740	3 9%

1/ URCS Table D8, Line 614 for each railroad
2/ URCS Table D8, Line 603 + Line 606 for each railroad
3/ URCS Table D8, Line 603 + Line 606 using each railroad's effective Federal tax rate for the year
4/ Column (3) - Column (4)
5/ Column (5) − Column (2)
6/ Reflects a combined GTW and IC for 2000 and 2001 only

Estimated Change In R/VC Ratios Due To Over-Recovery Of Taxes In URCS Variable Costs -- 2000

	Item (1)	Source (2)	BNSF (3)	CSX (4)	CN/GTW/IC (5)	KCS (6)	NS (7)	CP/SOO (8)	UP (9)
1	Revenue >180 (000's)	STB RSAM Workpapers	$2,081,041	$2,706,662	$321,237	$110,529	$2,021,637	$56,235	$2,365,869
2	Variable Cost >180 (000's)	STB RSAM Workpapers	$903,017	$1,139,046	$123,378	$42,985	$882,861	$27,252	$1,039,067
3	R/VC>180	Line 1 – Line 2	230%	238%	260%	257%	229%	206%	228%
4	Variable Cost Over-Statement As A Percent of Total Variable Cost	Exhibit No 2	3 4%	6 2%	1 2%	9 2%	1 7%	5 9%	5 3%
5	Revised Variable Cost>180 (000's)	Line 2 x (1 - Line 4)	$871,993	$1,068,511	$121,852	$39,048	$867,819	$25,636	$983,963
6	Revised R/VC > 180	Line 1 – Line 5	239%	253%	264%	283%	233%	219%	240%
7	Difference in R/VC>180	Line 6 - Line 3	8%	16%	3%	26%	4%	13%	13%

Estimated Change In R/VC Ratios Due To Over-Recovery Of Taxes In URCS Variable Costs -- 2001

	Item (1)	Source (2)	BNSF (3)	CSX (4)	CN/GTW/IC (5)	KCS (6)	NS (7)	CP/SOO (8)	UP (9)
1	Revenue >180 (000's)	STB RSAM Workpapers	1,789,982	2,373,598	568,501	88,902	2,278,285	49,759	2,591,558
2	Variable Cost >180 (000's)	STB RSAM Workpapers	769,320	1,012,980	216,824	33,952	951,544	22,739	1 139,837
3	R/VC >180	Line 1 -- Line 2	233%	234%	262%	262%	239%	219%	227%
4	Variable Cost Over-Statement As A Percent of Total Variable Cost	Exhibit No 2	4 0%	4 8%	6 3%	7 5%	1 9%	7 0%	4 1%
5	Revised Variable Cost>180 (000's)	Line 2 x (1 - Line 4)	$738,353	$964,808	$203,241	$31,422	$933,115	$21,140	$1,093,047
6	Revised R/VC > 180	Line 1 -- Line 5	242%	246%	280%	283%	244%	235%	237%
7	Difference in R/VC>180	Line 6 - Line 3	10%	12%	18%	21%	5%	17%	10%

Estimated Change In R/VC Ratios Due To Over-Recovery Of Taxes In URCS Variable Costs -- 2002

Item (1)	Source (2)	BNSF (3)	CSX (4)	CN/GTW (5)	KCS (6)	NS (7)	CP/SOO (8)	UP (9)
1 Revenue >180 (000's)	STB RSAM Workpapers	$1,899,138	$2,451,892	$304,136	$123,041	$2,835,254	$118,639	$3,733,667
2 Variable Cost >180 (000's)	STB RSAM Workpapers	$811,661	$1,037,664	$111,950	$46,869	$1,114,931	$52,988	$1,502,984
3 R/VC >180	Line 1 – Line 2	234%	236%	272%	263%	254%	224%	248%
4 Variable Cost Over-Statement As A Percent of Total Variable Cost	Exhibit No 2	4 7%	5 3%	15 9%	7 2%	2 9%	6 0%	4 4%
5 Revised Variable Cost>180 (000's)	Line 2 × (1 - Line 4)	$773,375	$982,477	$94,121	$43,481	$1,082,207	$49,823	$1 436 504
6 Revised R/VC > 180	Line 1 – Line 5	246%	250%	323%	283%	262%	238%	260%
7 Difference in R/VC>180	Line 6 - Line 3	12%	13%	51%	20%	8%	14%	11%

Estimated Change In R/VC Ratios Due To Over-Recovery Of Taxes In URCS Variable Costs -- 2003

	Item (1)	Source (2)	BNSF (3)	CSX (4)	CN/GTW (5)	KCS (6)	NS (7)	CP/SOO (8)	UP (9)
1	Revenue >180 (000's)	STB RSAM Workpapers	$2,625,012	$2,647,642	$546,640	$119,325	$2,584,071	$329,571	$3,740,593
2	Variable Cost >180 (000's)	STB RSAM Workpapers	$1,125,921	$1,120,981	$225,165	$44,889	$1,051 284	$147,591	$1,542,715
3	R/VC >180	Line 1 – Line 2	233%	236%	243%	266%	246%	223%	242%
4	Variable Cost Over-Statement As A Percent of Total Variable Cost	Exhibit No 2	4 7%	6 3%	8 4%	4 5%	2 9%	4 0%	3 9%
5	Revised Variable Cost>180 (000's)	Line 2 x (1 - Line 4)	$1,073,541	$1,050,447	$206,166	$42,855	$1,020,531	$141,724	$1,482,292
6	Revised R/VC > 180	Line 1 – Line 5	245%	252%	265%	278%	253%	233%	252%
7	Difference in R/VC>180	Line 6 - Line 3	11%	16%	22%	13%	7%	9%	10%

Revenue Adequacy Adjustment Factor Revised For Taxes And Overstated URCS Costs – 2000

Item (1)	Source (2)	BNSF (3)	CSX (4)	CN/GTW/IC (5)	KCS (6)	NS (7)	CP/SOO (8)	UP (9)
A. Revenue Adequacy Adjustment Factor								
1 Revenue >180 (000's)	STB RSAM Workpapers	$2,081,041	$2,706,662	$321,237	$110,529	$2,021,637	$56,235	$2,365,869
2 Adjusted Net Railroad Operating Income	Schedule 250, Line 5	$1,417,565	$399,528	$169,656	$59,485	$564,621	$61,628	$1,364,029
3 Tax Adj Net Inv Base	Schedule 250, Line 26	$16,108,696	$11,098,009	$2,875,531	$944,210	$10,265,830	$1,100,501	$19,768,540
4 Revenue Short/(Over)	(Line 3 x 11 0%) - Line 1 1/	$359,224	$824,582	$147,515	$44,661	$567,700	$59,757	$816,441
5 Revenue Adequacy Adjustment Factor	(Line 4 + Line 1) + 1	117%	130%	146%	140%	128%	206%	135%
B Revenue Adequacy Adjustment Factor Adjusted For Taxes and Over-Stated URCS Costs								
6 Revenue Between 100% and 180% (000's)	STB RSAM Workpapers	$4,972,660	$3,361,258	$576,086	$261,738	$3,106,933	$142,603	$5,993,958
7 Difference in R/VC>180	Exhibit No 3	8%	16%	3%	26%	4%	13%	13%
8 Estimated Increase in Revenue >180	Line 7 ÷ 80% 2/ x Line 6	$509,650	$659,067	$23,493	$84,824	$154,149	$23,190	$955,387
9 Revised Revenue >180	Line 1 + Line 8	$2,590,691	$3,365,729	$344,729	$195,353	$2,175,787	$79,424	$3,321,256
10 Effective Tax Rate	Exhibit No 5	15 9%	-19 4%	28 3%	-99 9%	25 1%	-3 3%	2 5%
11 Tax Adjusted Revenue Short/(Over)	Line 4 ÷ (1 - Line 10)	$427,211	$690,851	$205,852	$22,340	$758,161	$57,824	$837,799
12 Revised Revenue Adequacy Adjustment Factor	(Line 11 ÷ Line 9) + 1	116%	121%	160%	111%	135%	173%	125%

1/ The 11 0% figure is the 2000 Railroad Cost of Capital
2/ The difference in unadjusted R/VC>180 shown in Line 7 reflects an absolute difference between adjusted and unadjusted R/VC Since the revenues shown in Line 6 are assumed to have a uniform distribution and reflect movements with R/VC between 100% and 180%, dividing the differences in R/VC in Line 7 by the 80% spread in the R/VC for the movement revenues reflected in Line 6 reflects the percentage of the revenues in the 100% and 180% R/VC category that will move to the REV>180 category if the URCS variable costs is corrected for its over-recovery of taxes

Revenue Adequacy Adjustment Factor Revised For Taxes And Overstated URCS Costs -- 2001

Item (1)	Source (2)	BNSF (3)	CSX (4)	CN/GTW/IC (5)	KCS (6)	NS (7)	CPSOO (8)	UP (9)
A Revenue Adequacy Adjustment Factor								
1 Revenue >180 (000's)	STB RSAM Workpapers	$1,789,982	$2,373,598	$568,501	$88,902	$2,278,285	$49,759	$2,591,558
2 Adjusted Net Railroad Operating Income	Schedule 250, Line 5	$1,171,613	$507,387	$212,072	$66,321	$852,444	$64,711	$1,508,262
3 Tax Adj Net Inv Base	Schedule 250, Line 26	$16,447,780	$11,086,650	$4,321,972	$944,210	$10,265,830	$1,100,501	$19,768,540
4 Revenue Short/(Over)	(Line 3 x 10 2%) - Line 1 1/	$506,061	$623,449	$228,769	$29,988	$194,671	$47,540	$508,129
5 Revenue Adequacy Adjustment Factor	(Line 4 – Line 1) +1	128%	126%	140%	134%	109%	196%	120%
B Revenue Adequacy Adjustment Factor Adjusted For Taxes and Over-Stated URCS Costs								
6 Revenue Between 100% and 180% (000's)	STB RSAM Workpapers	$4,952,970	$3,392,142	$601,427	$266,830	$2,794,955	$171,036	$5,993,958
7 Difference in R/VC>180	Exhibit No 3	10%	12%	18%	21%	5%	17%	10%
8 Estimated Increase in Revenue >180	Line 7 – 80% 2/ x Line 6	$604,161	$496,070	$131,733	$70,340	$165,207	$35,401	$729,227
9 Revised Revenue >180	Line 1 + Line 8	$2,394,143	$2,869,667	$700,234	$159,242	$2,443,493	$85,159	$3,320,785
10 Effective Tax Rate	Exhibit No 5	16 1%	-3 3%	-11 6%	-45 9%	20 6%	2 9%	10 6%
11 Tax Adjusted Revenue Short/(Over)	Line 4 – (1 - Line 10)	$603,185	$603,730	$204,923	$20,555	$245,267	$48,970	$568,081
12 Revised Revenue Adequacy Adjustment Factor	(Line 11 – Line 9) + 1	125%	121%	129%	113%	110%	158%	117%

1/ The 10 2% figure is the 2001 Railroad Cost of Capital

2/ The difference in unadjusted R/VC>180 shown in Line 7 reflects an absolute difference between adjusted and unadjusted R/VC Since the revenues shown in Line 6 are assumed to have a uniform distribution and reflect movements with R/VC between 100% and 180%, dividing the differences in R/VC in Line 7 by the 80% spread in the R/VC for the movement revenues reflected in Line 6 reflects the percentage of the revenues in the 100% and 180% R/VC category that will move to the REV>180 category if the URCS variable costs is corrected for its over-recovery of taxes

Revenue Adequacy Adjustment Factor Revised For Taxes And Overstated URCS Costs -- 2002

Item (1)	Source (2)	BNSF (3)	CSX (4)	CN/GTW (5)	KCS (6)	NS (7)	CP/SOO (8)	UP (9)
A Revenue Adequacy Adjustment Factor								
1 Revenue >180 (000's)	STB RSAM Workpapers	$1,899,138	$2,451,892	$304,136	$123,041	$2,835,254	$118,639	$3,733,667
2 Adjusted Net Railroad Operating Income	Schedule 250, Line 5	$1,083,931	$583,400	$151,518	$60,339	$924,405	$67,922	$1,732,201
3 Tax Adj Net Inv Base	Schedule 250, Line 26	$16,995,427	$11,197,386	$4,853,026	$928,578	$10,135,790	$1,202,037	$20,056,343
4 Revenue Short/(Over)	(Line 3 x 9 8%) - Line 1 1/	$581,621	$513,944	$324,079	$30,662	$68,902	$49,878	$233,321
5 Revenue Adequacy Adjustment Factor	(Line 4 ÷ Line 1) + 1	131%	121%	207%	125%	102%	142%	106%
B Revenue Adequacy Adjustment Factor Adjusted For Taxes and Over-Stated URCS Costs								
6 Revenue Between 100% and 180% (000's)	STB RSAM Workpapers	$4,945,286	$3,466,119	$528,807	$247,266	$2,874,648	$202,107	$6,231,560
7 Difference in R/VC>180	Exhibit No 3	12%	13%	51%	20%	8%	14%	11%
8 Estimated Increase in Revenue >180	Line 7 - 80% 2/x Line 6	$716,045	$575,053	$340,170	$63,212	$276,304	$35,935	$895,510
9 Revised Revenue >180	Line 1 + Line 8	$2,615,182	$3,026,945	$644,307	$186,253	$3,111,558	$154,574	$4,629,177
10 Effective Tax Rate	Exhibit No 5	7 5%	-4 5%	-55 3%	-37 0%	12 1%	7 4%	9 1%
11 Tax Adjusted Revenue Short/(Over)	Line 4 ÷ (1 - Line 10)	$628,708	$491,895	$208,629	$22,376	$78,396	$53,862	$256,766
12 Revised Revenue Adequacy Adjustment Factor	(Line 11 ÷ Line 9) + 1	124%	116%	132%	112%	103%	135%	106%

1/ The 9 8% figure is the 2002 Railroad Cost of Capital

2/ The difference in unadjusted R/VC>180 shown in Line 7 reflects an absolute difference between adjusted and unadjusted R/VC Since the revenues shown on Line 6 are assumed to have a uniform distribution and reflect movements with R/VC between 100% and 180%, dividing the differences in R/VC in Line 7 by the 80% spread in the R/VC for the movement revenues reflected in Line 6 reflects the percentage of the revenues in the 100% and 180% R/VC category that will move to the REV>180 category if the URCS variable costs is corrected for its over-recovery of taxes

Revenue Adequacy Adjustment Factor Revised For Taxes And Overstated URCS Costs -- 2003

Item (1)	Source (2)	BNSF (3)	CSX (4)	CN/GTW (5)	KCS (6)	NS (7)	CP/SOO (8)	UP (9)
A Revenue Adequacy Adjustment Factor								
1 Revenue >180 (000's)	STB RSAM Workpapers	$2,625,012	$2,647,642	$546,640	$119,325	$2,584,071	$329,571	$3,740,593
2 Adjusted Net Railroad Operating Income	Schedule 250, Line 5	$1,078,475	$453,082	$223,644	$34,415	$917,743	$10,880	$1,492,593
3 Tax Adj Net Inv Base	Schedule 250, Line 26	$17,469,307	$11,381,334	$4,982,187	$926,896	$10,037,401	$1,153,358	$20,550,494
4 Revenue Short/(Over)	(Line 3 x 9 4%) - Line 1 1/	$563,640	$616,763	$244,682	$52,713	$25,773	$97,536	$439,153
5 Revenue Adequacy Adjustment Factor	(Line 4 ÷ Line 1) + 1	121%	123%	145%	144%	101%	130%	112%
B Revenue Adequacy Adjustment Factor Adjusted For Taxes and Over-Stated URCS Costs								
6 Revenue Between 100% and 180% (000's)	STB RSAM Workpapers	$5,697,698	$3,462,624	$770,141	$225,060	$3,129,677	$683,341	$7,032,526
7 Difference in R/VC>180	Exhibit No 3	11%	16%	22%	13%	7%	9%	10%
8 Estimated Increase in Revenue >180	Line 7 ÷ 80% 2/ x Line 6	$810,175	$686,436	$215,378	$35,488	$289,770	$78,950	$868,853
9 Revised Revenue >180	Line 1 + Line 8	$3,435,187	$3,334,078	$762,018	$154,812	$2,873,841	$408,522	$4,609,445
10 Effective Tax Rate	Exhibit No 5	6 4%	-23 6%	3 8%	0 0%	10 6%	10 5%	12 1%
11 Tax Adjusted Revenue Short/(Over)	Line 4 ÷ (1 - Line 10)	$601,981	$499,049	$254,343	$52,713	$28,836	$108,974	$499,781
12 Revised Revenue Adequacy Adjustment Factor	(Line 11 ÷ Line 9) + 1	118%	115%	133%	134%	101%	127%	111%

1/ The 9 4% figure is the 2003 Railroad Cost of Capital

2/ The difference in unadjusted R/VC>180 shown in Line 7 reflects an absolute difference between adjusted and unadjusted R/VC Since the revenues shown in Line 6 are assumed to have a uniform distribution and reflect movements with R/VC between 100% and 180%, dividing the differences in R/VC in Line 7 by the 80% spread in the R/VC for the movement revenues reflected in Line 6 reflects the percentage of the revenues in the 100% and 180% R/VC category that will move to the REV>180 category if the URCS variable costs is corrected for its over-recovery of taxes

Class I Railroad Effective Federal Tax Rates -- 2000 to 2007

	Item (1)	BNSF (2)	CSX (3)	CN/GTW (4)	KCS (5)	NS (6)	CP/SOO (7)	UP (8)
	2000							
1	Income (Loss) from Continuing Operations 1/	$1,811,713	$170,135	$177,555	$28,408	$277,552	$46,543	$1,419,663
2	Federal Income Taxes 2/	$288,319	($32,934)	$50,318	($28,385)	$69,725	($1,556)	$36,192
3	Effective Tax Rate 3/	15 9%	-19 4%	28 3%	-99 9%	25 1%	-3 3%	2 5%
	2001							
4	Income (Loss) from Continuing Operations 1/	$1,550,111	$324,162	$174,508	$45,519	$535,576	$71,465	$1,653,148
5	Federal Income Taxes 2/	$249,597	($10,588)	($20,307)	($20,890)	$110,485	$2,087	$174,464
6	Effective Tax Rate 3/	16 1%	-3 3%	-11 6%	-45 9%	20 6%	2 9%	10 6%
	2002							
7	Income (Loss) from Continuing Operations 1/	$1,531,115	$479,373	$39,738	$69,752	$700,202	$90,932	$2,113,228
8	Federal Income Taxes 2/	$114,672	($21,488)	($21,990)	($25,828)	$84,794	$6,726	$192,960
9	Effective Tax Rate 3/	7 5%	-4 5%	-55 3%	-37 0%	12 1%	7 4%	9 1%
	2003							
10	Income (Loss) from Continuing Operations 1/	$1,520,484	$223,439	$113,278	$26,647	$503,461	$74,671	$1,715,167
11	Federal Income Taxes 2/	$96,843	($52,704)	$4,303	$0	$53,483	$7,838	$208,064
12	Effective Tax Rate 3/	6 4%	-23 6%	3 8%	0 0%	10 6%	10 5%	12 1%
	2004							
13	Income (Loss) from Continuing Operations 1/	$1,562,569	$511,043	$274,009	$73,133	$1,147,620	$18,528	$823,088
14	Federal Income Taxes 2/	$323,745	$10,092	($8,154)	$14,942	$147,137	$3,909	($78,461)
15	Effective Tax Rate 3/	20 7%	2 0%	-3 0%	20 4%	12 8%	21 1%	-9 5%
	2005							
16	Income (Loss) from Continuing Operations 1/	$2,789,258	$962,736	$469,604	$14,299	$1,412,758	$125,391	$1,366,931
17	Federal Income Taxes 2/	$762,945	$220,345	$95,513	($2,079)	$320,984	$3,317	$313,447
18	Effective Tax Rate 3/	27 4%	22 9%	20 3%	-14 5%	22 7%	2 6%	22 9%
	2006							
19	Income (Loss) from Continuing Operations 1/	$3,476,342	$1,464,780	$668,186	$104,619	$1,846,273	$181,585	$2,383,316
20	Federal Income Taxes 2/	$869,232	$370,403	$147,439	$1,376	$490,190	$33,460	$659,738
21	Effective Tax Rate 3/	25 0%	25 3%	22 1%	1 3%	26 6%	18 4%	27 7%
	2007							
22	Income (Loss) from Continuing Operations 1/	$3,509,311	$1,600,811	$675,516	$103,191	$1,916,142	$219,146	$2,881,305
23	Federal Income Taxes 2/	$948,305	$378,485	$122,811	$0	$480,475	$36,734	$751,638
24	Effective Tax Rate 3/	27 0%	23 6%	18 2%	0 0%	25 1%	16 8%	26 1%

1/ Annual Report Form R-1, Schedule 210 Line 46 (b)
2/ Annual Report Form R-1, Schedule 210 Line 47 (b)
3/ Income (Loss) from Continuing Operations ÷ Federal Income Taxes

Source R-1 Reports from STB's website

VERIFICATION

COMMONWEALTH OF VIRGINIA   )
)
CITY OF ALEXANDRIA   )

I, THOMAS D CROWLEY, verify under penalty of perjury that I have read the foregoing Verified Statement of Thomas D Crowley, that I know the contents thereof, and that the same are true and correct Further, I certify that I am qualified and authorized to file this statement.

_____
Thomas D Crowley

Sworn to and subscribed
before me this 1ˢᵗ day of August , 2008

_____
Diane R Kavounis
Notary Public for the State of Virginia

My Commission Expires November 30, 2012
Registration Number 7160645

ATTACHMENT B

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

E I DUPONT DE NEMOURS AND COMPANY	)
	)
Complainant,	)
	)
v	)
	)
CSX TRANSPORTATION, INC,	)
	)
Defendant.	)
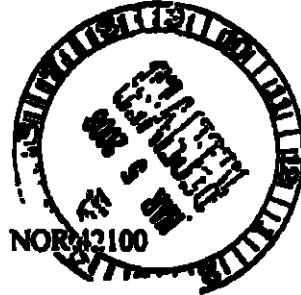
Docket No NOR 42100

COMPLAINANT'S REPLY EVIDENCE

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March 5, 2008

VI.   "OTHER RELEVANT FACTORS"

CSXT has made two adjustments to the maximum R/VC ratios produced by applying the Board's formula to CSXT's initial comparison group One adjustment is to correct an alleged error in the Board's RSAM calculation and the other is to adjust the R/VC ratios of the comparable traffic to 2007 "market" levels Although CSXT does not consider these adjustments to be "other relevant factors," it concedes that its evidence might be considered under that label CSXT Op Ev at 31 Because DuPont agrees with CSXT's statement that the quantified effects of its adjustments would be the same regardless of when in the process they are applied, *id*, the issue of whether or not these adjustments constitute "other relevant factors" is moot For the purpose of responding to CSXT, however, DuPont is addressing both adjustments as "other relevant factors "

A.   The Board Should Reject CSXT's RSAM Adjustment

CSXT has identified an alleged "flaw" in the Board's RSAM calculation that it attempts to correct Specifically, CSXT claims that, because the RSAM revenue shortfall is calculated after all taxes have been paid, the revenues needed to make up that shortfall also must be calculated after taxes in order for CSXT to achieve revenue adequacy. CSXT Op Ev at 19-21 DuPont witness Crowley identifies two fundamental problems with CSXT's adjustment First, CSXT erroneously applies its statutory tax rate to adjust the revenue shortfall for taxes Crowley Reply V S. at 34-35 Second, because the variable costs used to calculate the RSAM and R/VC>180 ratios include an over recovery of income taxes, they in fact understate the size of the R/VC >180 traffic and artificially increase the revenue adequacy adjustment factor *Id* at 36-37 Finally, this case is an improper proceeding to make changes to the RSAM calculation

1. CSXT does not pay the statutory tax rate

CSXT's adjustment of the RSAM for taxes wrongly assumes that CSXT pays the statutory tax rate, when its effective tax rate is much lower. This error causes a substantial and unjustified increase in the expansion ratio (the factor resulting from dividing the RSAM by the R/VC >180) from 1 24 to 1.38 CSXT Op Ev. at 26 Thus, CSXT has vastly overstated the impact of the alleged flaw

The effective tax rate is the amount of tax paid when all other government tax offsets or payments are applied, divided by the tax base Factors such as deferred income taxes, tax-loss carry-forwards and carry-backs, and governmental tax credits can drive the effective tax rate well below the statutory rate. Crowley Reply V S at 34 CSXT is no exception DuPont witness Crowley shows that CSXT's effective tax rates were well below its statutory rates from 2002 through 2005. *Id*

Ideally, the proper tax rate to apply is neither the effective nor the statutory rate, but CSX1's marginal tax rate, which is likely to be somewhere between the effective and statutory rates However, the Board would need a complete set of CSX1's income tax returns from 2002 through 2005 to determine CSXT's marginal tax rate for that time period *Id* at 35 Since CSXT, which is the sole source of that information, has chosen not to place it in evidence, the Board should apply CSXT's effective tax rate, if it elects to make any adjustment at all Since all taxpayers strive to minimize their tax liability, it also is reasonable to presume that CSXT's marginal tax rate is much closer to its effective than its statutory tax rate

The selection of the tax rate has a substantial impact upon the Board's expansion ratio of 1 24 for CSXT without any adjustments. Whereas the statutory tax rate produces a sizeable increase in the expansion ratio up to 1 38, CSXT's effective tax rate would increase the expansion ratio only modestly to 1 26 *Id*, Ex TDC-19 Although DuPont does not believe that

any adjustment is necessary or appropriate for the reasons given in the next two sections, if the Board decides to make any adjustment, it should rely upon CSXT's effective tax rate, not its statutory tax rate

2. **URCS overstates the necessary recovery of taxes to achieve revenue adequacy**

DuPont believes that no adjustment to RSAM is necessary because URCS overstates the tax component in variable costs by using the statutory tax rate URCS includes a variable return on investment ("ROI") component calculated using a pre-tax weighted-average cost of capital ("WACC") based on the federal statutory tax rate of 35 percent, which explicitly adds variable costs to each movement to cover the railroad's hypothetical tax burden Crowley Reply V S at 36 However, as explained above, actual tax expenses are much lower than the statutory rate due to offsets and credits

For example, as demonstrated in the preceding section, CSXT's effective tax rate is much lower than its statutory tax rate Taking 2005 as an example, Mr Crowley shows that CSXT booked $220 million in federal taxes, but URCS implicitly included $748 million to cover taxes inherent in the variable return on investment calculation *Id*, Ex TDC-20 In other words, URCS included taxes that were more than three times CSXT's actual income tax expense.

This impacts the RSAM revenue adequacy adjustment factor because the Board uses URCS variable costs, along with revenue statistics, to identify movements to include in the R/VC >180 sample group and the resulting Revenue >180 calculation By overstating variable costs, URCS effectively excludes movements from the R/VC>180 sample group, which lowers the Revenue>180 figure Correcting the URCS variable costs for this tax recovery overstatement, by using CSXT's effective tax rate, would increase the number of movements in the R/VC>180

35

sample group, and thereby increase the total Revenue>180 *Id* at 36-37 This would produce a more accurate revenue adequacy adjustment factor

3. This proceeding is an inappropriate forum to change the RSAM

The Board revised the RSAM in *Simplified Standards*, after an extensive period for public notice and comment During four rounds of comments and a public hearing, neither CSXT nor any other party identified the alleged flaw that CSXT urges the Board to correct in this proceeding It would be inappropriate for the Board to use this proceeding between just CSXT and DuPont to change the RSAM methodology that was thoroughly vetted in a notice and comment *rulemaking proceeding*

As DuPont has demonstrated above, there are a multitude of countervailing factors that must be considered before declaring the existence of a flaw in the RSAM methodology and precisely how to fix such a flaw DuPont believes there is no flaw, because there is in fact no under-recovery of actual taxes If anything, DuPont believes there is an overstatement of taxes, and the resulting revenue shortfall Moreover, even if there is a flaw, the fix is to use the effective, not the statutory, tax rate The Board, however, should not determine the existence of a flaw within the narrow confines of this proceeding Rather, the Board should apply the RSAM that it adopted after extensive public notice and comment and direct CSXT to raise the alleged flaw in a petition to reopen *Simplified Standards*

B. CSXT's "Market" Adjustment Is Neither Necessary Nor Appropriate

CSXT alleges that the cost and revenue data associated with movements from the 2002-2005 Waybill Samples "does not provide a comparable basis for evaluating the R/VC ratios of the challenged rates, which were established in mid-2007 . ." CSXT Op Ev at 26 Therefore, CSXT attempts to adjust the revenues and costs of every comparable movement to 2007 levels in order to "account for the significant market changes and dynamics and railroad cost inflation for

BEFORE THE
SURFACE TRANSPORTATION BOARD

E. I. duPont de Nemours and Company) Complainant) v.) CSX Transportation, Inc.) Defendant)	Docket No. NOR 42100

Reply
Verified Statement

of

Thomas D. Crowley
President
L. E. Peabody & Associates, Inc.

　　　　　　　　　　　　　　　　PUBLIC VERSION

IV. OTHER RELEVANT FACTORS

In this section of my Reply VS. I first review and critique the other relevant factors included by CSXT in its opening evidence. Then I quantify and apply DuPont's other relevant factors to the issue movements based upon DuPont's "final offer" comparable groups. The results of my other relevant factor analyses are summarized below under the following headings.

A.   CSXT s Other Relevant Factors

B.   Application of DuPont's Other Relevant Factors

A. CSXT'S OTHER RELEVANT FACTORS

My discussion of CSXT s other relevant factors addresses the two factors developed by CSXT in opening i.e. (1) an adjustment to RSAM Ratio, and (2) indexing of Waybill Sample variable costs and revenues.

1. Adjustment to RSAM Ratio

In December 2007, the STB published the results of its RSAM and R/VC $_{180}$ calculations for CSXT [24] Based on the STB's RSAM and R/VC $_{180}$ ratio calculations for 2002 to 2005 the average mark-up factor developed by dividing the RSAM ratio by the R/VC $_{180}$ ratio equals 1 24 This mark-up factor is applied to movements in the comparable group

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[24] See Non-Coal Guidelines, served December 11 2007 and corrected December 20 2007

CSXT states that it used the STB's RSAM and R/VC$_{186}$ figures to calculate the required mark-up ratios but made an adjustment to its calculations to account for an alleged flaw in the STB's methodology.[21] CSXT asserts that the STB's Simplified Standards procedures should have adjusted the REV$_{adeq.req.}$ component of the RSAM ratio to account for income taxes attributable to the additional revenue needed for CSXT to be deemed revenue adequate. Specifically, CSXT believes the correct procedure for developing the mark-up factor is to divide the difference between the RSAM and R/VC$_{186}$ ratios by one less the railroad's statutory federal and state income tax rates, and add the resultant quotient to the R/VC$_{186}$ ratio.[22] According to CSXT, this would produce a tax-adjusted RSAM ratio, and a resultant tax-adjusted mark-up factor.

There are two primary problems with CSXT's RSAM adjustment. First, CSXT assumes that the additional revenue from the REV$_{adeq.req.}$ calculation would be taxed at CSXT's statutory tax rates without any support for its assumption. Second, the variable costs used to calculate the RSAM and R/VC$_{186}$ ratios are already overstated due to an over recovery of income taxes, which understates the size of the R/VC$_{186}$ traffic and artificially increases the revenue adequacy adjustment factor. I address these two issues below.

[21] See CSXT Opening Evidence at 24

[22] CSXT's logic is that the REV$_{adeq.req.}$ component in the RSAM ratio is calculated based on after-tax earnings, and a straight application of the component to the R/VC$_{186}$ ratio which is based on pre-tax revenues would leave a railroad below a revenue adequate level.

a. Statutory Tax Rates
Versus Effective Tax Rates

CSXT's assertion that parties should adjust the REV$_{\text{......}}$ component of the RSAM ratio at CSXT's statutory federal and state tax rates ignores the fact that CSXT's income tax expenses do not reflect a straight application of the statutory tax rates. Simply stated. CSXT s effective tax rate is significantly different than the statutory tax rate.

The effective tax rate is the amount of tax an individual or firm pays when all other government tax offsets or payments are applied divided by the tax base. CSXT s Annual Report Form R-1 data clearly shows that the railroad s effective tax rate does not equal combined federal and state statutory rates as assumed by CSXT. One can distinctly see this fact in looking at CSXT's Form R-1 data. In 2003 CSXT recorded $297 million in income from continuing operations before taxes, but booked a tax benefit not a tax expense, of $50 million.[22] In other words CSXT's net railway operating income increased due to tax benefits. This was not an isolated situation. CSXT booked a tax benefit of $21.5 million in 2002 while generating nearly $500 million in income from continuing operations.[23] In sum between 2002 and 2005 CSXT's effective tax rates were well below the statutory standards in each year.

There are a number of factors that can drive a firm's effective tax rate well below its statutory tax rate. These include but are not limited to, the impact of deferred income taxes, tax-loss carryforwards and carrybacks and governmental tax credits. CSXT's Form R-1 data for 2003 does not indicate the reason for the large tax credit booked by CSXT. but the simple fact is that it illustrates clearly that CSXT is not paying taxes at a statutory level.

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[22] See CSXT 2003 Form R-1 Schedule 210 Lines 46 and 63
[23] See CSXT 2002 Form R-1 Schedule 210, Lines 46 and 63

While it is clear that CSXT's average effective tax rate is below the statutory level, it is unclear that CSXT's marginal tax rate is also below the statutory level, since it is not possible to verify CSXT's effective marginal tax rate with the available information. A marginal tax rate is the tax rate that applies to the last dollar of the tax base, and often applied to the change in tax obligations as income rises. In this instance, the $REV_{adjusted}$ dollars added to the Revenue $_{101}$ while holding all other operating expenses constant would be considered marginal revenue. CSXT assumes that this revenue would be taxed at the statutory rate. However, it is not possible to calculate the actual impact of taxes on this additional revenue with data in the record, or with publicly available CSXT financial data. Rather to effectively calculate the impact of the additional revenue would require a complete set of CSXT income tax returns for the 2002 to 2005 time period. Without this data, one cannot truly determine the tax impact, if any, of the additional revenue.

CSXT simplistically assumes that the additional revenue contributed by the $RPV_{adjusted}$ figure would be taxed at a statutory level. CSXT has clearly provided no support for this assumption in the record of this case. If the STB were to accept CSXT's argument that the $REV_{adjusted}$ component of the RSAM ratio required a tax adjustment, the only logical tax rate to use for the adjustment is CSXT's effective tax rate for each year. The use of CSXT's effective tax rate reflects the fact that CSXT does not incur tax expenses at the statutory rate, and would therefore provide an adjustment consistent with CSXT's actual tax position. Exhibit_(TDC-19) contains a restatement of CSXT's mark-up factor calculated using CSXT's effective tax rates. As shown in Exhibit_(TDC-19), the corrected mark-up factor equals 1 26, rather than CSXT's overstated factor of 1 38

b. URCS Overstates the Required Tax Recovery

The STB's URCS model includes a variable return on investment ("ROI") component calculated using a pre-tax weighted-average cost of capital ("WACC") based on the federal statutory tax rate of 35 percent. The use of the pre-tax WACC in the variable ROI, which adjusts the cost of equity to allow for a return to common equity holders from after-tax earnings, explicitly adds additional variable costs to each movement to cover the railroad's hypothetical tax burden. However, as explained above, railroads seldom pay taxes at the statutory rate due to offsets and credits, and their actual tax expenses are much lower than implied by the statutory rate. Therefore, using a statutory tax rate in the URCS model leads to an overstatement in each movement's variable costs.

Exhibit_(FDC'-20) illustrates the impact of the overstatement of tax recovery inherent in URCS. As shown in Exhibit_(FDC-20), actual federal taxes booked by CSXT in 2005 equaled $220 million based on R-1 Schedule 210, Line 47. In contrast, the STB's 2005 URCS implicitly included $748 million to cover the taxes inherent in the URCS variable ROI calculation. In other words, the URCS model included over three times the amount of costs necessary to cover CSXT's actual income tax expense.

The effect of the tax overstatement in URCS has a direct impact on the calculation of the RSAM revenue adequacy adjustment factor. At a base level, the STB uses URCS variable costs along with revenue statistics, to identify the movements to include in the R/VC $_{180}$ sample group, and the subsequent Revenue $_{180}$. The problem lies in that the STB has effectively excluded movements from the R/VC $_{180}$ sample group, and lowered its Revenue $_{180}$ figure, by overstating tax recovery in its URCS variable cost calculations. For example, assume a movement has an R/VC ratio of 179

percent based on the STB's URCS variable costs as presently calculated. Removing the tax recovery overstatement from the URCS variable costs would reduce the denominator in the R/VC ratio calculation and increase the R/VC ratio for the movement above the 180% threshold for inclusion in the R/VC $_{180}$ sample group. It is likely that correcting the URCS variable costs for this tax recovery overstatement would increase the number of movements in the R/VC $_{180}$ sample group, and thereby increase the total Revenue $_{180}$.

Any change in the Revenue $_{180}$ has a direct impact on the STB's revenue adequacy adjustment factor since, in its simplest form, the adjustment factor is equal to 1 plus the REV $_{adequacy gap}$ divided by the Revenue $_{180}$.[22] If the STB were to calculate CSXT's URCS variable costs using a pre-tax WACC taking into consideration CSXT's effective tax rate, instead of a statutory tax rate, the size of the R/VC $_{180}$ traffic group would be larger and produce a more accurate revenue adequacy adjustment factor.

2. Indexing of Waybill Sample Variable Costs and Revenues

CSXT asserts that the 2002 to 2005 revenue and variable cost data for the comparable group provides an inconsistent comparison for evaluating the R/VC ratios of the challenged rates, which were established in 2007 due to inflation in rail rates and railroad operating costs.[23] To address this alleged inconsistency, CSXT proposed three indexing methods – two related to indexing revenues and one for indexing variable costs – to adjust the comparable group's R/VC ratios. CSXT's first proposed method for indexing prior year revenues to 2007 levels relied upon average chemical

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[22] 1 + (REV $_{adequacy gap}$ – Revenue $_{180}$)

[23] See CSXT Opening Evidence at 26

Corrected RSAM Adjustment Calculation

	Item (1)	Source (2)	2002 (3)	2003 (4)	2004 (5)	2005 (6)	Four-Year Average 1/ (7)
STB's Calculation							
1	Board RSAM Ratio	Ex Parte 347 (Sub-No 2)	286%	292%	292%	300%	292 5%
2	Board R/VC >180	Ex Parte 347 (Sub-No 2)	236%	239%	231%	236%	236 0%
3	STB RSAM Mark-Up	Line 1 – Line 2	1 20	1 22	1 26	1 27	1 24
CSXT's RSAM Adjustment							
4	Shortfall (After -Tax)	Line 1 - Line 2	48%	53%	61%	64%	57%
5	CSXT Shortfall Calculation	Line 4 – (1 - 38 5%) 2/	78%	86%	99%	104%	92%
6	CSXT Adjusted RSAM	Line 2 + Line 5	316%	325%	330%	340%	327 8%
7	CSXT Adjusted RSAM Mark-Up	Line 6 – Line 2	1 33	1 36	1 43	1 44	1 39
Corrected RSAM Adjustment							
8	Income (Loss) from continuing operations (before inc taxes)	Sch 210 Ln 46	479,373	296,642	511,043	963,736	562,699
9	Income Taxes On Ordinary Income	Sch 210, Ln 63	(21,562)	(50,403)	15,220	249,418	48,168
10	Effective Tax Rate	Line 8 – Line 7	-4 5%	-17 0%	3 0%	25 9%	1 8%
11	Corrected Shortfall Calculation	Line 4 – (1 - Line 10)	46%	45%	63%	86%	60 1%
12	Corrected Adjusted RSAM	Line 2 + Line 11	284%	284%	294%	322%	296 1%
13	Corrected Adjusted RSAM Mark-Up	Line 12 Line 2	1 19	1 19	1 27	1 37	1 26

1/ Simple average of Columns (3) to (6)
2/ CSXT calculated an effective tax rate of 38 5%, including state taxes

Federal Income Tax Provision Included In URCS By STB

	Item (1)	Source (2)	2005 CSXT Amount (3)
1	CSX URCS Total Return On Investment @17 9%	URCS D8P1L135	$2,348,502
2	CSX URCS Total Return On Investment @12 2%	URCS D8P1L135 1/	$1,600,655
3	Provision For Federal Income Tax Included In URCS By STB	Line 1 - Line 2	$747,847
4	Actual Federal Taxes	CSX R-1 Sch 210 Line 47	$220,345
5	Tax Provision Included In URCS By STB In Excess Of Actual Taxes Paid	Line 3 - Line 4	$527,502

1/ URCS developed without provision of federal income tax