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November 7, 2019

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

ENTERED
Office of Proceedings
November 7, 2019
Part of
Public Record

**RE: Docket No. AB-565 (Sub-No. 17X), New York Central Lines, LLC –
Abandonment Exemption – in Dutchess County, NY**

Dear Ms. Brown:

CSX Transportation, Inc. (“CSXT”) is efilng its response in opposition to the document filed by National Association of Reversionary Property Owners.

Please contact me if you have any questions.

Sincerely yours,

Louis E. Gitomer

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-565 (Sub-No. 17X)

NEW YORK CENTRAL LINES, LLC-ABANDONMENT EXEMPTION-IN DUTCHESS
COUNTY, N.Y.

REPLY TO NATIONAL ASSOCIATION OF REVERSIONARY PROPERTY OWNERS

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: November 7, 2019¹

¹ Under 49 CFR 1011.2(a)(7), a reply to an appeal of the decision of the Director of the Office of Proceedings must be filed within 10 days after the due date of the appeal, which is due within 10 days after the decision appealed. Since the decision was served on October 23, 2019, the appeal was due by October 31, 2019 (within 10 days). Therefore, the reply is due on November 8, 2019.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-565 (Sub-No. 17X)

NEW YORK CENTRAL LINES, LLC-ABANDONMENT EXEMPTION-IN DUTCHESS
COUNTY, N.Y.

REPLY TO NATIONAL ASSOCIATION OF REVERSIONARY PROPERTY OWNERS

CSX Transportation, Inc. (“CSXT”), as successor by merger to New York Central Lines, LLC (“NYC”)², files this Reply to the submittal made on October 23, 2019, by the National Association of Reversionary Property Owners (“NARPO”). CSXT considers the submittal to be an appeal (the “Appeal”) of the Decision and Notice of Interim Trail Use or Abandonment in *New York Central Lines, LLC-Abandonment Exemption-in Dutchess County, N.Y.*, Docket No. AB 565 (Sub-No. 17X) (served October 23, 2019) (the “*Decision*”). As an appeal under 49 CFR 1011.2(a)(7), NARPO has failed to meet the procedural and substantive requirements. Therefore, CSXT respectfully requests that the Surface Transportation Board (the “Board”) reject or in the alternative deny the appeal.

Dutchess County and CSXT have complied with the requirements of 49 CFR 1152.29. Dutchess County filed a request for a Notice of Interim Trail Use (“NITU”) on July 30, 2019 including a complete Statement of Willingness to Assume Financial Responsibility in accord with 49 CFR 1152.29(a)(3). On July 30, 2019, CSXT filed a letter stating “CSXT agrees to negotiate with Dutchess County toward a possible interim trail use/rail banking arrangement.”

²*CSX Corp.-Control & Operating Leases/Agreements-Conrail Inc.*, Docket No. FD 33388 (Sub-No. 94) (served November 3, 2003) (authorizing the consolidation of NYC within CSXT).

Subsequently, NARPO filed five “comments,” all of which were refuted by CSXT and Dutchess County.

The Director issued the *Decision* granting the NITU to Dutchess County over the 2.72-mile portion of the Line between milepost QCO 0.48 and milepost QCO 2.1±, and between milepost QCO 2.0± and milepost QC 74.08 (the “Trail Line”).

NARPO then submitted its “appeal.”

REJECTION OF THE APPEAL

In order to file an appeal of a decision, the Board’s rules require the payment of a filing fee of \$350. 49 CFR 1002.2(f)(61)(i). NARPO did not pay the filing fee and did not request waiver of the fee. The NARPO filing is deficient under 49 CFR 1002.2(b), and warrants rejection.

NARPO’S APPEAL SHOULD BE DENIED ON THE MERTIS

In considering appeals of initial decisions issued by the Director pursuant to the authority delegated under 49 C.F.R. § 1011.7(a)(2)(ii), the Board considers whether the Director made the correct decision, given the circumstances presented.³

NARPO has not demonstrated that the Director did not make the correct decision. Indeed, NARPO’s admission of connectivity of the Trail Line to the national rail system via the Metro-North Commuter Railroad (“Metro-North”), described below, defeats its own argument.

NARPO’s appeal of the *Decision* argues that it had previously demonstrated that the Trail Line is not connected to the national rail system. NARPO admits that the Trail Line connects to

³ *Union Pacific Railroad Company—Abandonment and Discontinuance of Service Exemption—in Cerro Gordo County, Iowa*, Docket No. AB 33 (Sub-No. 327X) slip op. at 3 (served January 26, 2018).

Metro-North.⁴ NARPO's appeal contends that the Trail Line only connects to the Metro-North and that Metro-North is not part of the national rail system because Metro-North is not a common carrier. NARPO relies on prior filings that it made in this proceeding to support its erroneous positions.⁵

Regardless of whether Metro-North is a common carrier, the Metro-North line that connects to the Trail Line is part of the national rail system. In its October 16, 2019 reply to NARPO, CSXT included a verified statement by Mr. Marco Turra, Director of Passenger Operations. In his unrefuted testimony, Mr. Turra stated that "Pursuant to an agreement between CSXT and Metro-North Commuter Railroad, CSXT operates freight trains over the line of Metro-North Commuter Railroad on a daily basis with an average number of two trains."

It cannot be rationally disputed that CSXT is a common carrier by rail operating over the national rail system. It is also beyond dispute that before CSXT could discontinue service over Metro-North, it would require advance authority from the Board under 49 U.S.C. §10903. Therefore, if for no other reason, because of CSXT's operations over the Metro-North line, the Trail Line connects to the national rail system. The Director considered all of the issues raised by NARPO and correctly decided that Dutchess County met the requirements to be issued a NITU.

⁴ The Appeal at 1 admits that "the Board will see the only connection to the proposed abandoned rail lines is the connection to Metro-North."

⁵ CSXT replied to and refuted all of the claims made by NARPO.

CSXT respectfully requests that the Board either reject or deny the Appeal.

Respectfully submitted,

Louis E. Gitomer

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: November 7, 2019

CERTIFICATE OF SERVICE

I certify that I have this day served copies of this Reply on all parties of record in this proceeding by electronic service or first class mail, postage pre-paid.⁶

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⁶ The service list has been updated to include the names of officials at different agencies and necessary addresses.

Elizabeth Waldstein-Hart
Executive Director
Friends of the Walkway over the Hudson
P. O. Box 889
Poughkeepsie, NY 12602

Louis E. Gitomer

Louis E. Gitomer
November 7, 2019