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October 23, 2018

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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
October 23, 2018
Part of
Public Record

Re: **Docket No. FD 36223**
Norfolk Southern Railway Company -- Petition to
Set Trackage Rights Compensation -- Norfolk and
Portsmouth Belt Line Railroad Company

Dear Ms. Brown:

Respondent Norfolk and Portsmouth Belt Line Railroad Company ("NPBL") hereby replies to the petition of CSX Transportation, Inc. ("CSXT") for leave to intervene in this proceeding. CSXT holds 42.857% of the outstanding common stock of NPBL; the remaining 57.143% is held by Norfolk Southern Railway Company ("NS"), the petitioner herein.

While NPBL does not agree with all of the representations made in CSXT's petition, NPBL supports CSXT's intervention in this proceeding. As a user of NPBL's neutral switching services in the Hampton Roads terminal area, CSXT has a legitimate interest in the trackage rights fees that NPBL pays to reach, *inter alia*, the Norfolk International Terminals. NPBL will vigorously defend and pursue its own interests in this matter. Nonetheless, as reflected by CSXT's pending allegations in another forum,¹ it is unclear that NPBL can fully represent CSXT's interests to CSXT's satisfaction. Intervention is appropriate in the circumstances.

Beyond that, CSXT has oddly argued that the Board cannot determine trackage rights compensation here until the agency has approved or exempted a *new* trackage rights transaction between NPBL and NS. CSXT Petition at 5, n.7. But the Board's authority to set compensation arises from its jurisdiction over the *existing* trackage rights operation, not the next

¹ See CSXT letter filing dated October 5, 2018, attaching CSXT federal complaint against NPBL, NS and related parties alleging derivative and antitrust claims.

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Ms. Cynthia T. Brown

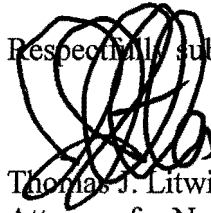
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one. *Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134, 147-150 (1946). As the seminal *Tex Mex* decision makes clear, that is true even in the setting of "grandfathered" arrangements predating the Interstate Commerce Commission's jurisdiction over trackage rights. Thus, the Board plainly has the requisite authority to adjudicate this compensation case now.

I certify that a copy of this letter has been served by electronic or first-class mail on counsel of record in this proceeding, as shown below.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Norfolk and Portsmouth
Belt Line Railroad Company

TJL:tl

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