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October 30, 2018

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: FD 36223
Norfolk Southern Railway Company – Petition To Set Trackage
Rights Compensation – Norfolk & Portsmouth Belt Line Railroad
Company

Dear Ms. Brown:

On September 13, 2018, Norfolk Southern Railway Company (“NSR”) filed a petition to determine the level of compensation that should govern the trackage rights that Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”) operates over NSR’s tracks located in Norfolk, VA and Chesapeake, VA. On October 3, CSX Transportation, Inc. (“CSXT”) filed a Petition to Intervene in the above-captioned proceeding (“Pet. to Intervene”). NSR replied to the Pet. to Intervene on October 23, 2018.

NSR opposed CSXT’s intervention for two reasons: (1) it would unduly complicate the procedural and substantive administration of this proceeding; and (2) it would unduly broaden the issues in front of the Board. CSXT replied to NSR’s opposition to CSXT’s intervention on October 26, 2018. Ironically, CSXT’s reply proves the precise points that NSR made in its October 23rd opposition filing.

First, the mere fact that CSXT has filed an unauthorized reply illustrates that CSXT’s involvement will unavoidably complicate the establishment of an orderly procedural schedule and the efficient administration of this proceeding. CSXT has now filed its third filing in this proceeding, before it has even been authorized to intervene. NPBL and NSR could have likely resolved the procedural issues by now, but CSXT’s involvement has already complicated the

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establishment of such an orderly and consensual schedule. Further, CSXT has made it clear that it wants to take discovery, file its own methodology, and participate in any mediation, meaning every stage of this proceeding would face similar, and likely even greater, delays and complications.

Second, CSXT's October 26th reply confirms that CSXT is attempting to broaden, not narrow, the issues in dispute. Both NPBL's and NSR's filings agree that the issue in front of the Board is the level of compensation that NPBL will pay for trackage rights over NSR's lines. In contrast, CSXT's October 26th filing shows that its interests are directed at using this proceeding to advance separate (and unfounded) arguments related to access to Norfolk International Terminal.¹ CSXT further raises its potential to question unspecified "other terms in the draft trackage rights agreement", matters not placed in front of the Board. Indeed, CSXT makes no reference to setting the right level of compensation pursuant to the well-established SSW compensation methodologies, the purpose of the requested proceeding.

Finally, NPBL has articulated its interest in ensuring that the trackage rights compensation set by the Board is consistent with the SSW approach. CSXT has not shown why NPBL cannot, or will not, adequately litigate that issue, nor has it shown how its interest on that issue is different than NPBL's. Indeed, the only contrasting interest asserted by CSXT is that it wants to use this proceeding to argue unrelated issues and/or allegations that it has already raised in court. It should not be allowed to do so. Its request to intervene should be denied.

Sincerely,



William A. Mullins

cc: Parties of Record
Mr. Louis Gitomer

¹ The fact that CSXT also filed a copy of its federal suit in this proceeding also heavily indicates that CSXT intends to raise issues unrelated to the SSW compensation approach.