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October 16, 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

**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 efilings 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: October 16, 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”)¹, files this Reply to the third reply to a reply² filed on October 10, 2019, by the National Association of Reversionary Property Owners (“NARPO”) in this trail use phase of this abandonment proceeding. CSXT has entered a Purchase and Sale Agreement to sell the approximately 2.72-mile portion of the Line between milepost QCO 0.48 and milepost QCO 2.1±, and milepost QCO 2.0± and milepost QC 74.08 (formerly milepost QCO 3.2) in the city and town of Poughkeepsie, Dutchess County, NY (the “Line”) for interim trail use. CSXT and Dutchess County are waiting for the Surface Transportation Board (the “Board”) to serve the Notice of Interim Trail Use requested by Dutchess County on July 30, 2019.³

Without evidence, NARPO again claims that the Line does not connect to the national rail network. NARPO has created a false premise that in its judgment (1) the Metro-North Commuter Railroad (“Metro-North”) is solely a commuter rail line; (2) commuter rail is the equivalent of a tourist train; and (3) therefore the Metro-North line is not subject to the

¹□ *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).

² A reply to a reply is not permitted. 49 CFR 1104.13(c).

³ CSXT agreed to negotiate on July 30, 2019.

jurisdiction of the Board. Aside from its argument, NARPO claims that there is no evidence that the Metro-North Line is available for freight service. Finally, NARPO also claims that there are “gaps in the record that need to be addressed” because “there is no mention of the 2005 Discontinuance.”

NARPO does not dispute that the westernmost portion of the Line at milepost QC 74.08 connects to the north-south Metro-North rail line. Metro-North is a “railroad.” *Metro-North Commuter R. Co. v. Buckley*, 521 U.S. 424, 427 (1997). Moreover, CSXT operates rail freight service over Metro-North. See the Verified Statement of Mr. Turra. Based on the Supreme Court stating that Metro-North is a railroad and that CSXT, also a railroad operates over Metro-North, it is clear that the Line connects to the national rail system. CSXT requests the Board to reject NARPO’s syllogism as both factually and legally wrong.

NARPO’s claim that the Metro-North line is not available for freight service is also factually and legally in error as demonstrated by Mr. Turra’s verified statement.

Finally, NARPO attempts to argue that its misunderstanding of the requirements for abandonment and discontinuance of service prevent this proceeding from moving forward. The Line was acquired by New York Central Lines, LLC (“NYC”) for operation by CSXT as part of the joint acquisition and partition of Conrail by CSXT and Norfolk Southern Corporation.⁴ The New York and Eastern Railway, LLC (“NY&E”) operated over the Line pursuant to a lease. CSXT and NY&E sought an exemption to discontinue service over the Line and NYC, as owner of the Line, sought an exemption to abandon the Line. Discontinuance and abandonment authority were granted.⁵ NY&E consummated its discontinuance by a letter filed with the Board

⁴ See *CSX Corp. et al.—Control—Conrail Inc. et al.*, 3 S.T.B. 196 (1998).

⁵ *New York And Eastern Railway, LLC—Discontinuance Exemption—in Dutchess County, NY*, STB Docket No. AB-873X; *CSX Transportation, Inc.—Discontinuance Exemption—in Dutchess County, NY*, STB Docket No. AB-55

on January 11, 2015. NYC was authorized to and did consolidate with CSXT.⁶ CSXT is the only remaining party with a common carrier obligation over the Line. CSXT has agreed to negotiate interim trail use, and as previously mentioned, has entered an agreement for interim trail use for the Line. The only impediment to CSXT transferring the Line to Dutchess County in conformance with 16 U.S.C. 1247(d) and 49 CFR 1152.29 is the issuance of a Notice of Interim Trail Use by the Board.

CSXT requests the Board to reject all of the arguments of NARPO as incorrect as a matter of fact and law. CSXT also respectfully requests the Board to expeditiously grant the NITU requested by Dutchess County.

Respectfully submitted,

Louis E. Gitomer

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INC.

Dated: October 16, 2019

(Sub-No. 652X); and *New York Central Lines, LLC—Abandonment Exemption—in Dutchess County, NY*, STB Docket No. AB-565 (Sub-No. 17X), served October 15, 2004.

⁶ *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation [Petition For Supplemental Order]* Decision No. 2, STB Finance Docket No. 33388 (Sub-No. 94) (served November 7, 2003).

**VERIFIED STATEMENT OF MARCO TURRA, DIRECTOR OF PASSENGER
OPERATIONS FOR CSX TRANSPORTATION, INC.**

My name is Marco Turra. I am the Director of Passenger Operations for of CSX Transportation, Inc. ("CSXT"). I am familiar with the operations of CSXT in New York State along the east side of the Hudson River. Pursuant to an agreement between CSXT and Metro-North Commuter Railroad, CSXT operates freight trains over the line of the Metro-North Commuter Railroad on a daily basis with an average number of two trains.

I, Marco Turra declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed October 15, 2019.

/s/ *Marco Turra*

Marco Turra
Director of Passenger Operations
CSX Transportation, Inc.

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.⁷

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⁷ 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
October 16, 2019