

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Office of Proceedings  
October 23, 2015  
Part of  
Public Record

STB Finance Docket No. 35949

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PETITION OF NORFOLK SOUTHERN RAILWAY COMPANY  
FOR EXPEDITED DECLARATORY ORDER

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REPLY OF  
CSX TRANSPORTATION, INC.

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**Introduction**

CSX Transportation, Inc. ("CSXT") submits these Reply Comments in accordance with the Board's August 24, 2015 extending the filing period for replies to the Norfolk Southern's ("NS") petition for declaratory relief. CSXT joins the comments of the Association of American Railroads ("AAR") in support of the NS, and CSXT submits these additional comments to urge the Board to speak strongly and clearly to the rising threat of disjointed regulation of interstate transportation. That threat is typified by this case and the Delaware statute at issue. The Board should provide clear guidance that discourages states from attempting to burden interstate commerce when, like here, the only outcome is the burden of pointless litigation imposed upon the Board, the rail industry, and the states themselves.

CSXT is a Class I freight railroad based in Jacksonville, Florida. CSXT operates in 23 eastern states, including Delaware. CSXT operates 130 miles of track in Delaware,

serving 8 customers. CSXT has three significant yards in Delaware, and currently operates an average of 23 trains in Delaware each day. CSXT shares NS's concern that Delaware's new Anti-Idling statute<sup>1</sup> would, if it could be implemented, significantly burden operations in Delaware, to the detriment of CSXT's Delaware customers and other CSXT customers across the nation. CSXT is confident the Board will protect its Delaware customers and its operations from this burden. CSXT asks the Board, as it resolves the dispute in this proceeding, to go further and ensure that railroads retain their statutory right<sup>2</sup> to be free of conflicting state regulation so as to enhance the safety and efficiency of railroad operations.

### **Discussion**

CSXT submits these Reply Comments to highlight the need for the Board to send a clear and plain message to officials that may discourage actions similar to Delaware's new Anti-Idling statute, and to clearly indicate that the Board will protect the interstate rail system from fragmented regulation.

#### **A. This is Blackletter Law.**

As is made clear by the briefing provided by NS and the AAR, this is not a difficult or unsettled issue. The effort by state and local governments to regulate the operations of interstate rail carriers in this manner is preempted by the Interstate Commerce Commission Termination Act ("ICCTA").<sup>3</sup>

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<sup>1</sup> See 21 Del. C §§8501-8505.

<sup>2</sup> See 49 U.S.C. § 10702(2).

<sup>3</sup> See 49 U.S.C. § 10501(b); *U.S. EPA—Pet. for Declaratory Order*, FD No. 35803 (STB served Dec. 30, 2014).

## **B. The Board Must Speak Clearly**

Given that the legal issue is so clear, CSXT urges the Board to consider why the issue repeatedly comes before it, in slightly different guise from a variety of different locales. CSXT suggests this will exemplify a ‘tragedy of the commons.’ Everyone gains a little from the free flow of interstate rail transportation, but the benefits (whether real or imagined) of local regulations disrupting that flow are highly concentrated. These cases arise because localities perceive a value from limiting freight operations in their neighborhood, and hope to gain that value at the expense of the nation’s transportation network as a whole. This is obviously a parochial and naïve expectation, and the disaster this courts is the core reason Congress provided the Board broad preemption powers in ICCTA.

CSXT urges the Board to take this opportunity to make a strong statement of the law with the goal of discouraging these wasteful efforts. The Board should consider how to frame this issue so that the calculus changes. The Board should seek to limit localities ability to pretend the burdens they seek to impose will be small. If the Board can make clear that the only outcome of these regulatory efforts is that localities will have to pay a legal bill in a losing cause, they may respect the ICCTA preemption, and allow railroads to operate free of fragmented local rules as Congress intended.

## Conclusion

CSXT trusts that the Board will reiterate the law. This issue is not unique, nor unprecedented. CSXT urges the Board to do more and articulate the serious issue in a manner that will reduce the number of such cases in the future.

Respectfully Submitted,



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October 23, 2015

## CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served an electronic copy of the foregoing Reply Comments, upon the following parties of record in this proceeding:

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