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ENTERED
Office of Proceedings
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Part of
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VIA E-FILING

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

RE: The Atlanta Development Authority d/b/a Invest Atlanta and Atlanta BeltLine, Inc. – Verified
Petition for a Declaratory Order, STB Docket No. FD 35991 – Comments of Norfolk Southern
Railway Company

Dear Ms. Brown:

Norfolk Southern Railway Company (“NSR”) respectfully requests the Board’s leave, pursuant to 49 C.F.R. § 1117.1, to late-file the following comments in the above-captioned proceeding. Under the Board’s rules, replies to the Petition for Declaratory Order (Petition) filed on January 8, 2016, by the Atlanta Development Authority (ADA) and Atlanta BeltLine, Inc. (ABI) (collectively, the “Petitioners”), were due no later than January 28, 2016.¹ As the selling railroad in the initial transaction at issue in this proceeding, NSR seeks leave to file its comments in order to establish a complete record before this Board.

NSR supports the Petition, adopts the arguments of Petitioners as set forth in the Petition, and requests that this Board grant the relief requested by Petitioners. NSR retained all of the railroad tracks and railroad facilities and the rail common carrier rights and obligations associated with the Atlanta BeltLine Northeast Quadrant (the “Line”, as defined in the Petition) when NSR sold its underlying real property interests in the Line to Petitioners’ predecessors in interest. See Petition, n.5 and Exhibits A, B and C to the Petition. The purchaser from NSR had no ability to interfere with NSR’s exercise of its common carrier obligation and no rights with respect to the operation of freight rail service or the alteration of any freight rail facilities. Id. Accordingly, the real estate transaction did not allow the purchaser to infringe upon or limit NSR’s railroad assets, rights and obligations, and no Board authority was required for NSR’s sale of real property.

¹ To the extent necessary to address facts or argument relating to the parties who filed a reply to the Petition in this proceeding on January 27, 2016, NSR respectfully seeks leave to file a reply to a reply. Although 49 C.F.R. § 1104.13(c) prohibits the filing of a reply to a reply without the Board’s permission, NSR does not seek to broaden the scope of issues in this proceeding and believes its comments will provide the Board with a complete record on which to base its decision.

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NSR maintained the Line in active common carrier status throughout the transfer of the underlying real property interests to ADA. In 2010, NSR obtained and exercised abandonment authority over most of the Line. *Norfolk Southern Railway Co. – Abandonment Exemption – In Fulton Co., GA*, STB Finance Docket No. AB-290 (Sub. No. 210X) (Consummation Notice) (Filed Oct. 22, 2010). NSR maintains its common carrier obligation over the northernmost segment of the Line between Milepost DF 636.56 and Milepost DF 637.40, a distance of less than one mile. This still-active segment of the Line abuts the properties of the self-described adjacent property owners on Flagler Ave., NE, who filed a reply to the Petition in this proceeding on January 27, 2016.

When NSR sold its real property interests in the Line, it retained all interests relating to and necessary for its exercise of its common carrier obligation on the Line, including the railroad tracks and facilities. For this reason, and as set forth in detail in the Petition, NSR supports Petitioners' request for a declaratory order. The Board should confirm that no Board authority was necessary for NSR to sell the underlying real property when NSR retained its exclusive common carrier obligation, retained all rights necessary to fulfill that obligation, did not transfer any form of control over NSR operations, and did not transfer ownership of the railroad tracks and facilities.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Maggie Paule". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Cc: Parties of Record

Certificate of Service

Finance Docket No. 35991

I hereby certify that on March 14, 2016, I have caused a copy of the foregoing comments of Norfolk Southern Railway Company to be served upon the following individuals via electronic-mail and first class mail, postage prepaid:

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Dated: March 14, 2016