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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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)	
JGB PROPERTIES, LLC – PETITION)	
FOR DECLARATORY ORDER –)	Finance Docket No. 35817
WOODARD INDUSTRIAL RAILROAD)	
OPERATIONS)	
)	
)	

RESPONSE TO REPLIES OF IRONWOOD, LLC/STEELWAY REALTY CORPORATION AND CSX TRANSPORTATION TO SUPPLEMENT TO PETITION FOR DECLARATORY ORDER OF JGB PROPERTIES, LLC

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Dated: February 5, 2015

assertions presented by CSXT on reply, on which JGB has not been able to respond. The content of these reply filings necessitate and require that JGB be granted leave to respond through this short response as a matter of fairness and to provide the Board with a full and complete record.²

First, CSXT, through its counsel, does not dispute that the track was removed and severed from its mainline, or any of JGB’s factual statements, other than to assert that JGB has made an “egregious . . . inference that CSXT personnel removed the track. CSXT emphatically denies that its employees removed the track owned by a third party.” CSXT Reply at 3. However, according to the new information provided by

If the Board ultimately decides to accept Ironwood/Steelway’s delinquent filing out of time, then fairness requires it to also accept this Surreply.

² JGB’s Supplement provided the Board with new, pertinent factual information pertaining to a recent track removal incident that was not available to it when it filed its Petition. JGB understands that the Board’s rules normally prohibit so called “replies-to-replies.” See 49 C.F.R. Pt. 1104. However, Ironwood/Steelway’s late-filed reply contains new evidence and allegations first asserted by them on reply pertaining to the track removal. CSXT’s reply contains contradictory factual statements first asserted by it on reply. This Surreply is necessary and proper to allow JGB to respond to new factual assertions filed in a reply statement and to provide a more complete record. It also will not prejudice any party or unduly prolong the proceeding. See, e.g., *Michigan Air-Line Ry. Co. – Abandonment Exemption – in Oakland Cnty., Mich.*, STB Docket No. AB 1053 (Sub-No. 1X) (STB served May 18, 2011) at 1 (surreply accepted where it “addresses allegations first asserted on [] reply, and because it establishes a more complete record”); *Ashley Creek Phosphate Co. v. Chevron Pipe Line Co, et al.*, STB Docket No. 40131 (Sub-No. 1) (STB served Apr. 21, 1995) (surreply granted to allow rebuttal of new evidence and to provide a more complete record); *Otter Tail Power Co. v. The Burlington N. & Santa Fe Ry. Co.*, STB Docket No. 42071 (STB served Nov. 15, 2002) (surreply authorized to address “alleged mischaracterization” and to provide a more complete record).

Ironwood/Steelway witness Richard Berry, CSXT was directly involved, and actually participated in the decision to remove the track.³

Based on Mr. Berry's recent "investigation," following a nearby train derailment, a CSXT representative and two other individuals all met, "walked over" to the track removal location on Track 232 to inspect the track, and then "all decided" to "cut a short piece of rail from Track 232." Berry V.S. at 3. According to Mr. Berry, these parties, *including CSXT*, all "agreed that removal of this short section of rail from Track 232 was the best course of action," which was then removed by a contractor. *Id.* Despite its strenuous protests to the contrary, clearly CSXT was a direct participant in the decision to remove the track for its own benefit according to Ironwood/Steelway.

Second, while Ironwood/Steelway characterize JGB's filing as "factually misleading," most of the facts presented in Mr. Pigula's Verified Statement are uncontested:

³ CSXT asked, and received a two+ week extension from the Board to file its reply based on the need to fully "explore" and "confer with" involved CSXT personnel that might have been involved.

Pigula V.S. (at 2)	Response by Ironwood/Steelway and CSXT
(1) At some point in October 2014, a length of rail off of the South Steelway Boulevard rail line was removed.	Undisputed, except as to the date of track removal.
(2) The trackage that was removed was located on National Grid's property.	Undisputed.
(3) National Grid was not responsible for the recent track segment removal and did not give permission for the track to be removed.	Undisputed.
(4) JGB was not responsible for the track removal and did not give permission for the track to be removed.	Undisputed.
(5) All indications are that CSX representatives likely removed the track, confirmed through discussions with local CSX representatives on October 28, 2014.	Ironwood/Steelway assert that CSXT "decided" and "agreed" with several others to have the track removed by a third-party contractor. CSXT "emphatically denies that its employees removed track owned by a third party."
(6) The track removal now completely severs CSX's lead track and its connecting St. Lawrence Subdivision Main Line from the South Steelway Boulevard trackage.	Confirmed as a factual matter as to physical severance, although Ironwood/Steelway and CSXT assert that, as a legal matter, the removal of the track does not constitute line abandonment.
(7) The recent removal of the rail trackage renders the remaining tracks and corridor on JGB's property all the way to the Ironwood warehouse space entirely and categorically unusable for future rail service, even if restored, because the remaining tracks and corridor are now completely severed from the CSX Main Line.	Uncontested, although Ironwood/Steelway and CSXT assert that the removed trackage can be replaced in the future.
(8) As noted, I was made aware of the missing section in late October. To the best of my knowledge, neither CSX nor Ironwood has taken any actions to restore or repair the missing section.	Confirmed as to lack of actions taken to restore or repair track.
(9) In other words, nothing has changed since the time of my discovery of the missing trackage.	Confirmed.

Third, Mr. Berry characterizes JGB as having engaged in “illegal” track removal activities in “disregard for Ironwood’s easement rights.” Berry V.S. at 2. At the same time, he attempts to excuse the recent track removal activities as appropriate, apparently because of the “urgency of the situation” following a purported track derailment in July 2014. However, based on JGB’s initial follow-up with some of the involved individuals referenced in Mr. Berry’s Verified Statement, it appears that the described “derailment” may actually have been a train “grounding” on another portion of

the track removed from the location of the track replacement in question. Additionally, it appears that the actual track removal/replacement activity did not occur in immediate response to any derailment in July as suggested, but rather several months later as further evidenced by the pictures provided by Mr. Pigula from late October 2014 showing fresh torch marks on the involved cut trackage, as well as a lack of rust, etc.

For its part, CSXT excuses the action, again, without taking any responsibility, by merely asserting that the severed trackage can be “easily replaced.” That is a far cry from CSXT’s contentions that the previous track removal activities consisted of an act that “intentionally interfered with” another’s property rights that was “illegal,” and “interfered with CSXT providing service.” CSXT Reply (May 30, 2014) at 5, 8. And if it were true that this type of track is “easily replaced,” why did the involved parties (including apparently CSXT) go to the extreme lengths of agreeing to remove track that was not theirs from a third party’s property without any prior notice or consent? The answer appears clear that the action was done because CSXT and its personnel actually consider the South Steelway Boulevard Line to be abandoned, as further demonstrated by its previous spiking of the Line.

In fact, unlike the previous removal of unlawful or abandoned trackage from JGB’s *own* property, neither CSXT nor Ironwood/Steelway dispute the fact that the trackage recently removed was located on a *third party’s* property: National Grid. Nor do they dispute that National Grid did not give permission for the track to be removed. *See* Pigula V.S. at 1-2.

JGB has been in recent contact with representatives from National Grid concerning the incident. At this time, National Grid has been unable to confirm that there is any valid railroad easement on its involved property for the South Steelway Boulevard Line, that anyone has the authority or permission to enter its property and remove the trackage, or that anyone has the authority or permission to construct or restore the trackage, although it is currently searching its files for pertinent information.⁴

Finally, Ironwood/Steelway argue that “merely the physical severance (without Board authorization) of a track” is not enough to demonstrate *de facto* abandonment of a line. However, that statement, even if true, completely misses JGB’s point that “[t]his recent track removal event, *in addition* to CSXT’s previous spiking of the trackage over a decade ago – along with Ironwood/Steelway allowing the Line to further deteriorate over that time while doing nothing to restore the track to operational condition – further establishes that the Line has no actual potential demand for traffic sufficient to establish the financial feasibility of operations, currently or in the future.” JGB Supplement at 7 (emphasis added). This recent incident is pertinent and relevant to JGB’s Declaratory Order request, despite Ironwood/Steelway and CSXT’s protests to the contrary.

For the foregoing reasons, and the reasons previously stated by JGB, the Board should grant JGB’s request for a declaratory order, as set forth in pages 1 and 2 of its Petition.

⁴ JGB will supplement the record based on any new, pertinent information obtained from National Grid.

Respectfully submitted,

 /s\

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Dated: February 5, 2015

CERTIFICATE OF SERVICE

I hereby certify that this 5th day of February, 2015, I served copies of the foregoing Supplement by First Class United States Mail and/or more expedited means upon counsel of record for Ironwood, LLC/Steelway Realty Corporation and CSX Transportation, Inc., as follows:

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