



SIDLEY AUSTIN LLP
 1501 K STREET, N.W.
 WASHINGTON, D.C. 20005
 +1 202 736 8000
 +1 202 736 8711 FAX

ratkins@sidley.com
 (202) 736 8889

BEIJING	HONG KONG	SHANGHAI
BOSTON	HOUSTON	SINGAPORE
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September 16, 2015

Rachel D. Campbell
 Director, Office of Proceedings
 Surface Transportation Board
 395 E St S.W.
 Washington, D.C. 20423

ENTERED
 Office of Proceedings
 September 16, 2015
 Part of
 Public Record

Re: CSX Transportation, Inc – Petition for Declaratory Order, STB Docket No. 35832

Dear Ms. Campbell:

As counsel to CSX Transportation, Inc. (“CSXT”) in the above-referenced proceeding, we write in response to the Reply filed by HAMP, Inc. (“HAMP”) on September 14, 2015. See HAMP, Inc.’s Opposition to CSXT’s Motion for Reconsideration and/or Clarification, *CSX Transp. Inc. – Pet. for Declaratory Order*, STB Docket No. 35832 (filed Sept. 14, 2015) (“Reply”).

The Reply was filed beyond the 20 days provided for by agency rule. 49 C.F.R. § 1104.13. However, CSXT will not object to the Board accepting the untimely pleading, as it further demonstrates the need for the Board to grant CSXT’s request for reconsideration. HAMP claims that the Board’s decision in *Thomas Tubbs, et al. – Pet. for Declaratory Order*, STB Docket No. 35792 (served Oct. 31, 2014) (“*Tubbs*”) is “inapposite.” Reply at 1. The distinction, claims HAMP, is that the *Tubbs* case involved the construction, operation, and maintenance of an embankment and mainline track. In contrast, argues HAMP, “[a]ll of the allegations in HAMP’s Amended Complaint focused on CSXT’s failure to maintain the Culvert. They do not relate to the track or any activity that is preempted under the ICCTA.” Reply at 7. This argument is specious. It is uncontested that the “Culvert” (really a small bridge) is and has been an integral part of CSXT’s mainline track structure and operations for the past century and thus enjoys the full protections of ICCTA preemption.

HAMP’s late-filed pleading illustrates the uncertainty that persists as a result of the disparate decisions issued in this matter and in *Tubbs*. This is precisely the concern that CSXT cautioned the Board about in its Petition for



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Ann D. Begeman
Deb Miller
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Reconsideration. *See* CSXT Pet. for Reconsideration and/or Clarification at 8-9 (filed Aug. 20, 2015) (noting that the Board is uniquely well positioned to address issues of federal preemption and should do so to avoid inconsistent and conflicting decisions). The Board should not rely on a state court to properly interpret the *Tubbs* decision and to see through HAMP's efforts to distinguish that case.

Best regards,

A handwritten signature in black ink, appearing to read "Raymond A. Atkins".

Raymond A. Atkins

RAA:caj

cc (via e-mail and first class mail):

Counsel to HAMP:

Mark A. Moorstein
Courtney B. Harden
Mariam W. Tadros