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March 30, 2015

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
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ENTERED
Office of Proceedings
March 30, 2015
Part of
Public Record

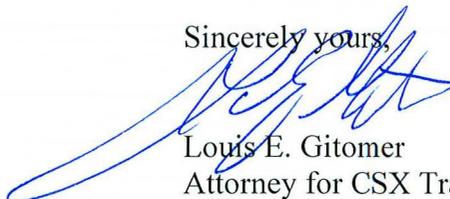
Re: **Docket No. FD 35873, *Norfolk Southern Railway Company-Acquisition and Operation-Certain Rail Lines of the Delaware and Hudson Railway Company, Inc.***

Dear Ms. Brown:

Enclosed for efileing is a Reply by CSX Transportation, Inc.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35873

NORFOLK SOUTHERN RAILWAY COMPANY—ACQUISITION AND OPERATION –
CERTAIN RAIL LINES OF THE DELAWARE AND HUDSON RAILWAY COMPANY,
INC.

CSX TRANSPORTATION, INC. – REPLY

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Dated: March 30, 2015

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35873

NORFOLK SOUTHERN RAILWAY COMPANY—ACQUISITION AND OPERATION –
CERTAIN RAIL LINES OF THE DELAWARE AND HUDSON RAILWAY COMPANY,
INC.

CSX TRANSPORTATION, INC. – REPLY

CSX Transportation, Inc. (“CSXT”) opposes and respectfully requests that the Surface Transportation Board (the “Board”) reject the Application of the East of Hudson Rail Freight Service Task Force, Inc. to Appear and File Out of Time a Request for Modification of the Proposed Transaction to Include Transfer of Delaware and Hudson’s Trackage Rights from Mechanicville, N.Y. to an Interchange with the New York and Atlantic Railway at Fresh Pond, Jt. Queens County, NY (the “Responsive Application”) filed on January 20, 2015.

The East of Hudson Rail Freight Service Task Force, Inc. (“East of Hudson”) filed the Responsive Application in response to the minor¹ Application filed under 49 U.S.C. §11323(a)(2) on November 17, 2014, by Norfolk Southern Railway Company (“NS”) to acquire and operate 282.55 miles of the Delaware and Hudson Railway Company, Inc.’s (“D&H”) lines located in Pennsylvania and New York, as well as the retention and modification of existing NS trackage rights over D&H between MP 484.85±, in the vicinity of Schenectady, NY, and CPF 467 in the vicinity of Mechanicville, NY (the “Application”). On December 16, 2014, the Board accepted NS’s Application. *Id.*

¹ The application was found to be minor under 49 C.F.R. 1180.2(c) in *Norfolk Southern Railway Company—Acquisition and Operation –Certain Rail Lines of the Delaware and Hudson Railway Company, Inc.*, Docket No. FD 35873, slip op. at 11 (served December 16, 2014).

The Responsive Application seeks to include in the transaction proposed in the Application the transfer of trackage rights and haulage that D&H has over CSXT between Mechanicville, NY, and an interchange with the New York and Atlantic Railway (“NY&A”) at Fresh Pond, Junction, in Queens County, NY (“D&H’s CSXT trackage rights”).

D&H’s CSXT trackage rights were granted in *CSX Corp. et al. – Control – Conrail, Inc. et al.*, 3 S.T.B. 196, 282-283 (1998) (“*Conrail*”). Pursuant to the *Conrail* decision, D&H and CSXT, as successor to New York Central Lines LLC, entered into a trackage rights agreement where D&H received certain overhead trackage rights between (1) Selkirk, NY and Oak Point Yard, NY with the right to access customers located in the Bronx or Queens via CSXT switching, and (2) between Oak Point Yard and Fresh Pond Junction, NY to effect interchange with NY&A.

By the Responsive Application, East of Hudson requests the Board to order the transfer of the D&H’s CSXT trackage rights to NS under 49 U.S.C. §11323, even though NS has not requested or justified such a transaction and CSXT has not agreed to such a transaction. Indeed, the Asset Purchase Agreement and the Commercial Agreements in the Application do not include the D&H’s CSXT trackage rights as one of the assets that NS is seeking approval to acquire and operate.

CSXT urges the Board to reject the Responsive Application as a clear violation of the Board’s rules.

First, “No responsive application shall be permitted to minor transactions.” 49 CFR 1180.4(d)(1). There is no question that the Responsive Application meets the definition in 49 CFR 1180.3(h) as it was filed in response to the Application and is seeking affirmative relief as a condition that requires an application. The transfer of trackage rights from D&H to NS would

require an application or notice of exemption under 49 U.S.C. §11323(a)(6). The Responsive Application is not permitted under the Board's rules and must be rejected.

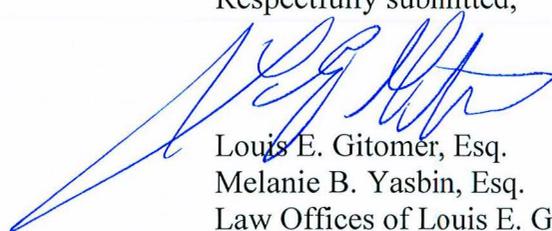
Second, the Responsive Application does not provide the information required of a complete application. An incomplete application must be rejected under the Board's rules and not accepted for consideration by the Board. 49 CFR 1180.4(c)(7)(i) and (d)(3). Examples of the short comings of the Responsive Application include, but are not limited to, the absence of a detailed description including competitive impacts, employee impacts, financial information, a draft agreement, and operational data.

Finally, as a non-carrier, East of Hudson cannot invoke the Board's jurisdiction under 49 U.S.C. §11323. Transactions under section 11323 must be between two carriers.

CSXT respectfully urges the Board to reject the Responsive Application filed by East of Hudson because it is not permitted as a response to minor transactions, it is incomplete, and East of Hudson cannot invoke the Board's jurisdiction under section 11323.

Respectfully submitted,

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Dated: March 30, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Reply in FD 35873, *Norfolk Southern Railway Company—Acquisition and Operation—Certain Rail Lines of the Delaware and Hudson Railway Company, Inc.* to be served by pre-paid first class mail on:

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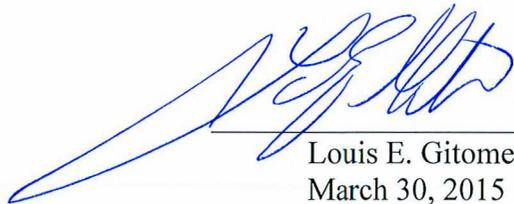
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