

237225

**BAKER & MILLER PLLC**

ATTORNEYS and COUNSELLORS  
2401 PENNSYLVANIA AVENUE, NW  
SUITE 300  
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820  
FACSIMILE: (202) 663-7849

ENTERED  
Office of Proceedings  
December 12, 2014  
Part of  
Public Record

WILLIAM A. MULLINS

(202) 663-7823 (Direct Dial)  
E-Mail: [wmullins@bakerandmiller.com](mailto:wmullins@bakerandmiller.com)

December 12, 2014

**VIA E-FILING**

Cynthia T. Brown, Chief  
Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington DC 20423-0001

Re: *Norfolk Southern Railway Company – Acquisition and Operation -  
Certain Rail Lines of the Delaware and Hudson Railway Company, Inc.*, STB  
Docket FD 35873

Dear Ms. Brown:

Norfolk Southern Railway Company (“NS”) writes in opposition to the late-filed December 12, 2014 letter request by Alma Realty Corp. (“Alma”) to join the motion filed by CNJ Rail Corporation to reject NS’s Application (NS-1) filed on November 17, 2014. For the reasons stated in NS-6, the Application is not incomplete for failure to include the discontinuance proceeding(s) that Delaware & Hudson Railway Company (“D&H”) will file. NS is the only party that requires authority to acquire the line and modify its existing trackage rights, and the Application was complete with respect to those transactions; a fact that neither CNJ nor Alma dispute. The D&H discontinuance filings are not “related” filings with respect to NS’s Application. D&H is not an applicant or co-applicant in this proceeding and such discontinuances are not something that NS could even legally file. The timing of when D&H files its discontinuance request(s), what it files (*i.e.* application, petition for exemption, notice of exemption), and when the discontinuance request(s) would be effective is solely up to D&H and is not subject to NS’s approval or rejection.

Likewise, the complete Application was filed on November 17, 2014, not December 8, 2014. Alma is incorrect that Appendix A of the Direct Short Line Access Agreement was filed eight days after the rest of the Application. Actually, Appendix A was filed on November 17, 2014 in Volume II as part of the Application. See NS-1, Vol. II, pg. 129. On December 8, 2014, NS filed an Errata to Appendix A, adding the name of a short line that was named elsewhere in the agreement but had been inadvertently left off that one page. Having

one mistaken page does not make the entire Application “incomplete,” and Alma points to no precedent holding to the contrary.

Finally, the fact that on December 8, 2014, NS submitted for the record the numerous support letters for the Transaction that it had received to date does not mean that the Application that was filed on November 17 was incomplete. Nothing in the regulations governing the contents for the filing of a minor application requires that support letters be submitted with the application, especially in the context of this minor transaction where the first public notice of the Transaction was on the date of the filing of the Application. Instead, consistent with 49 CFR §1104.13(a), any party may file a reply to any pleading. NS was pleased to file the support letters that have been received in reply to the Application. These support letters are as much a part of the record as the filings by CNJ and Alma.

Respectfully submitted,



William A. Mullins  
Attorney for Norfolk Southern Railway Company

cc: Parties of Record