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BY E-FILING

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

Re: *Grand Trunk Western Railroad Company. – Acquisition of Operating Easement – CSX Transportation, Inc. (Docket No. FD 35661)*

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find Grand Trunk Western Railroad Company's Rebuttal in Support of Petition for Exemption and Reply to Comments of American Train Dispatchers Association.

Very truly yours,



David A. Hirsh

Counsel for Grand Trunk Western Railroad Company

Enclosure

cc: Louis E. Gitomer, Esquire
Michael S. Wolly, Esquire

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 35661

GRAND TRUNK WESTERN RAILROAD COMPANY – ACQUISITION OF
OPERATING EASEMENT – CSX TRANSPORTATION, INC.

REBUTTAL IN SUPPORT OF PETITION FOR EXEMPTION AND
REPLY TO COMMENTS OF AMERICAN TRAIN DISPATCHERS ASSOCIATION

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35661

GRAND TRUNK WESTERN RAILROAD COMPANY – ACQUISITION OF
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REBUTTAL IN SUPPORT OF PETITION FOR EXEMPTION AND
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Grand Trunk Western Railroad Company (“GTW”) hereby submits its rebuttal in support of its Petition for Exemption in this proceeding and replies to the Comments of the American Train Dispatchers Association (“ATDA”) (filed Nov. 8, 2012).

The transaction at issue in this proceeding involves the acquisition by GTW of an exclusive, perpetual non-assignable railroad operating easement over approximately 2.1 miles of CSX Transportation, Inc.’s (“CSXT”) Memphis Terminal Subdivision between Leewood, TN and Aulon, TN (the “Leewood-Aulon Line”). GTW’s acquisition of the exclusive operating easement over the Leewood-Aulon Line is in exchange for the grant by GTW to CSXT of an exclusive operating easement over a portion of GTW’s Elsdon Subdivision between Elsdon, IL and Munster, IN (the “Elsdon Line”), which is the subject of an application filed by CSXT in Docket No. FD 35522.¹

In its Petition for Exemption, GTW demonstrated (1) that regulation of the proposed acquisition under 49 U.S.C. §§ 11323-11325 (which ordinarily would apply to

¹ The Board is considering these two proceedings together for administrative purposes, but has not consolidated them. *See* Decision served Oct. 11, 2012, slip op. at 1 n.1.

acquisitions of rail property such as this one) was not necessary to the rail transportation policy of 49 U.S.C. § 10101, (2) that the proposed acquisition was limited in scope, and (3) that regulation of the proposed acquisition under 49 U.S.C. §§ 11323-11325 was not necessary to protect shippers against the abuse of market power. No party has disputed any of these points. Therefore, there should be no question that the proposed transaction satisfies the requirements for exemption under 49 U.S.C. § 10502(a).

ATDA has filed Comments in both this proceeding and in Docket No. 35522 in which it states that it takes no position either in favor of or in opposition to the transactions at issue. ATDA also states, as do both CSXT in its Application in Docket No. 35522 and GTW in the Petition for Exemption in this proceeding, that these transactions are to be governed by the *New York Dock* labor protective conditions. *See New York Dock – Control – Brooklyn Eastern Dist. Term.*, 360 I.C.C. 60 (1979), as modified by *Wilmington Term. R.R. Inc. – Purchase and Lease – CSX Transp. Inc.*, 6 I.C.C.2d 799 (1990) (together, “*New York Dock* conditions”). GTW agrees that the *New York Dock* conditions apply to this proceeding. However, for the reasons set forth in GTW’s Response to ATDA’s Comments in Docket No. FD 35522 (filed Nov. 28, 2012) (which is incorporated herein by reference), to the extent ATDA seeks to have the Board impose additional protection for train dispatchers on either GTW or CSXT, require either railroad to adopt or apply the existing collective bargaining agreement of the other following completion of the transaction, or make any determination as to whether an override of a particular collective bargaining agreement is necessary, those requests should be rejected, and ATDA should be referred to the negotiation and arbitration procedures provided under *New York Dock*.

CONCLUSION

For the reasons stated above, the Board should grant the Petition for Exemption, subject only to the *New York Dock* labor protection conditions proposed in that Petition.

Respectfully submitted,



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Counsel for Grand Trunk Western Railroad Company

November 29, 2012

CERTIFICATE OF SERVICE

I certify that I have this 29th day of November, 2012, served the foregoing Rebuttal in Support of Petition for Exemption and Reply to Comments of American Train Dispatchers Association on all parties to this proceeding by sending a copy by first-class mail, or a more expeditious method of delivery, to each of the following:

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