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October 10, 2012

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

**233151**  
**ENTERED**  
**Office of Proceedings**  
**October 10, 2012**  
**Part of**  
**Public Record**

RE: Finance Docket No. 35675, *National Railroad Passenger Corporation and CSX Transportation, Inc.—Petition for Declaratory Order*

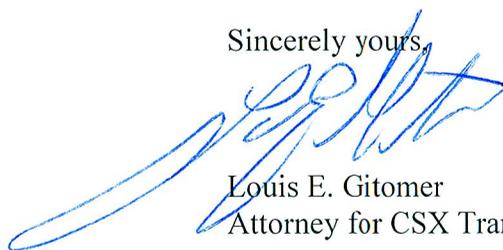
**EXPEDITED HANDLING REQUESTED**

Dear Ms. Brown:

Enclosed for e-filing is the Response to the Response of the Brotherhood of Maintenance of Way Employees Division/IBT and Brotherhood of Railroad Signalmen filed on October 4, 2012 by the National Railroad Passenger Corporation and 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

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FINANCE DOCKET NO. 35675

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NATIONAL RAILROAD PASSENGER CORPORATION AND CSX TRANSPORTATION,  
INC.— PETITION FOR DECLARATORY ORDER

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RESPONSE

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Attorneys for: CSX Transportation, Inc.

Dated: October 10, 2012

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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NATIONAL RAILROAD PASSENGER CORPORATION AND CSX TRANSPORTATION,  
INC.— PETITION FOR DECLARATORY ORDER

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RESPONSE

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The National Railroad Passenger Corporation (“Amtrak”) and CSX Transportation, Inc. (“CSXT”), collectively “Petitioners,” reply to the Response of the Brotherhood of Maintenance of Way Employees Division/IBT (“BMWED”) and Brotherhood of Railroad Signalmen (“BRS”) filed on October 4, 2012 (the “Response”).

Petitioners filed a Petition for Declaratory Order on September 12, 2012 (the “Petition”) with the Surface Transportation Board (the “Board”). The Petition seeks an expedited ruling that the Board does not have regulatory authority over the lease of the Hudson Line from CSXT to Amtrak (the “Proposed Transaction”). The Hudson Line includes (1) a line owned by CSXT between the westbound signal at Hoffmans, NY, milepost 169.77, and Poughkeepsie, NY, milepost 75.7, exclusive of certain defined properties, e.g., the freight yard in Hudson, NY and sidetracks, and (2) all facilities of CSXT that are used in the operation of the Amtrak-owned “Post Road” line of railroad between approximately milepost 187.4 in Niverville, NY and milepost 199.5 in Rensselaer, NY.

Amtrak and the New York State Department of Transportation (“NYSDOT”) plan to upgrade the Hudson Line for improved passenger service. The capital improvements would

create construction jobs and allow Amtrak to better serve the public by increasing reliability on the Hudson Line.

Expedition is sought because NYSDOT has sought funding for these projects from the Federal Railroad Administration, and plans to complete certain portions of the project in 2013. Planning for the capital projects must begin before construction begins. The Proposed Transaction must be consummated before planning begins. Amtrak and CSXT cannot consummate the Proposed Transaction until Petitioners are certain that the Board will not exercise regulatory authority over the lease, such that the Board's authority is not required for the Proposed Transaction to proceed, or that there is appropriate authority from the Board in place. Petitioners believe that if they can consummate the Lease Agreement by November 3, 2012,<sup>1</sup> they will have sufficient time to plan for the 2013 construction season. Any delay in such consummation might delay some construction from 2013 to 2014.

BMWED and BRS "do not oppose the outcome sought by Amtrak and CSXT." Response at 1. However, they use the Response to reiterate their judicially rejected<sup>2</sup> position that the so called *State of Maine* line of cases<sup>3</sup> have been decided wrongly.

Petitioners disagree with BMWED and BRS. Petitioners argued in the Petition and continue to contend that the *State of Maine* analysis applies to the Proposed Transaction. In addition to the *State of Maine* analysis, Petitioners also relied on the argument that the Board's jurisdiction over Amtrak is limited by 49 U.S.C. §24301(c). Under 49 U.S.C.

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<sup>1</sup> In the Petition, Petitioners requested expedited handling from the Board so that the Board would serve a decision allowing consummation of the Proposed Transaction by November 5, 2012. Following further discussions between Amtrak, NYSDOT, and CSXT, the parties agree that closing on the lease is required by November 3, 2012 in order to complete planning for the 2013 construction season.

<sup>2</sup> See *Mass. Dep't of Transp.—Acquis. Exemption—Certain Assets of CSX Transp., Inc.*, FD 35312, slip op. at 3 (STB served May 3, 2010) *aff'd sub nom. Bhd. Of R.R. Signalman v. STB*, 638 F.3d 807 (D.C. Cir. 2011).

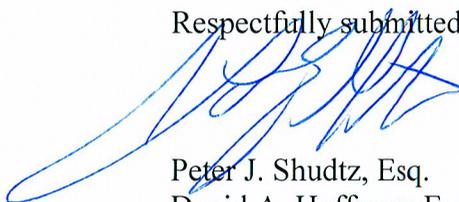
<sup>3</sup> *Maine, DOT—Acquisition Exemption, Maine Central Railroad Company*, 8 I.C.C.2d 835 (1991) ("*State of Maine*").

§24301(c), Subsection IV of Title 49, does not apply to Amtrak, with certain exceptions that do not apply here.<sup>4</sup>

Petitioners would prefer that the Board conclude that it does not have regulatory authority over the lease of the Hudson Line from CSXT to Amtrak under both the *State of Maine* doctrine and section 24301(c). However, it is even more important to Petitioners to obtain an expeditious ruling from the Board so that certain work under the Proposed Transaction can commence and be completed during the 2013 construction season in upstate New York.

Therefore, Petitioners respectfully request the Board to expeditiously grant the Petition as the Board best sees fit so that the Proposed Transaction can be expeditiously consummated.

Respectfully submitted,



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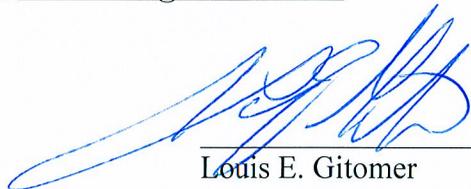
Dated: October 10, 2012

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<sup>4</sup> See Petition at 14.

CERTIFICATE OF SERVICE

I hereby certify that I have caused this pleading to be served electronically on Richard S. Edelman, O'Donnell, Schwartz & Anderson, [REdelman@odsaw.com](mailto:REdelman@odsaw.com).



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Louis E. Gitomer  
October 10, 2012