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June 11, 2010

VIA ELECTRONIC FILING

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

ENTERED
Office of Proceedings

JUN 11 2010

Part of
Public Record

Re: **Finance Docket No. 35110**
Florida Department of Transportation -- Acquisition
Exemption -- Certain Assets of CSX Transportation, Inc.

Dear Chief Brown:

We are in receipt, on behalf of the Florida Department of Transportation ("FDOT"), of the "Motion for Leave to Supplement the Record and Second Declaration of R.G. Demott" filed in the above-captioned proceeding on June 2, 2010 by the Brotherhood of Railroad Signalmen ("BRS"). While purportedly seeking to "supplement" the record, BRS's current filing does not provide (or claim to provide) any new factual developments arising since BRS's last filing on April 29, 2010. Instead, it seeks simply to "respond[] to . . . areas of allegation of fact offered by FDOT" in FDOT's May 17, 2010 reply to BRS's April 29th filing. BRS Motion at 1. As such, BRS's current filing is a classic "reply to a reply" prohibited by the Board's rules. 49 C.F.R. § 1104.13(c). That such a filing claims to offer surreply on factual rather than legal arguments does not change application of the rule.

BRS's surreply addresses three paragraphs in FDOT's prior reply (FDOT Reply at 19-21) with a sixteen-paragraph, 9-page declaration from a union official. That imbalance is indicative of the extent to which BRS seeks to lead the Board on an irrelevant and time-consuming diversion from the so-called "Maine DOT" principles that govern disposition of FDOT's pending motion to dismiss. BRS's private representational interest in signal construction work associated with an intrastate commuter rail project has nothing to do with the rail freight adequacy considerations that inform the jurisdictional inquiry under Maine DOT. Nothing BRS says in its proffered supplemental declaration addresses the relevant Maine DOT criteria or otherwise assists the Board in rendering a decision herein.

As an informational item, FDOT has previously pointed out that existing BRS signalmen on the subject rail line have been offered extensive protections -- a fact not disputed

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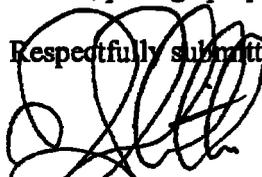
Page 2

by BRS. That fact does not change this proceeding into a forum on BRS's representational aspirations in Florida, or allow the Board to be enlisted in an effort to advance BRS's institutional interests. Maine DOT and Massachusetts Department of Transportation -- Acquisition Exemption -- Certain Assets of CSX Transportation, Inc., Finance Docket No. 35312 (STB served May 3, 2010) are determinative of BRS's legal arguments, and BRS's efforts to turn this into a case about something else should not be indulged.

FDOT thus opposes BRS's motion for leave to "supplement the record." As the timing of an STB decision herein is now critical to the implementation of the SunRail commuter project, the Board should proceed immediately to a decision on FDOT's pending motion to dismiss.

I certify that a copy of this letter has been served by electronic and overnight delivery on counsel for BRS, and by first class mail, postage prepaid, on other parties of record.

Respectfully submitted,



Thomas J. Litwiler

Attorney for Florida Department of Transportation

TJL:tl

cc: Richard S. Edelman, Esq.
George W. Mayo, Jr., Esq.
Jared I. Roberts, Esq.