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February 21, 2020
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February 21, 2020

BY E-FILEING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

Re: *Bessemer and Lake Erie Railroad Company – Acquisition and Operation – Certain Rail Lines of CSX Transportation, Inc. in Onondaga, Oswego, Jefferson, Saint Lawrence, and Franklin Counties, New York* (Docket No. FD 36347)

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding are two versions of the Reply of Bessemer and Lake Erie Railroad Company to Supplemental Information of Finger Lakes Railway Corp. (designated as "B&LE-7"). One version, marked as "PUBLIC," and from which sensitive financial, commercial, and operating information has been redacted, is to be filed on the public record. The second, marked as "HIGHLY CONFIDENTIAL," is an unredacted version to be filed under seal subject to the Protective Order entered in this proceeding by the Board's stamp order served October 22, 2019.

Sincerely,

/s/ Claire M. Maddox
Partner

Attachments

cc: All Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36347

BESSEMER AND LAKE ERIE RAILROAD COMPANY

— ACQUISITION AND OPERATION —

**CERTAIN RAIL LINES OF CSX TRANSPORTATION, INC. IN ONONDAGA,
OSWEGO, JEFFERSON, SAINT LAWRENCE,
AND FRANKLIN COUNTIES, NEW YORK**

**REPLY OF BESSEMER AND LAKE ERIE RAILROAD COMPANY TO
SUPPLEMENTAL INFORMATION OF FINGER LAKES RAILWAY CORP.**

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February 21, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36347

BESSEMER AND LAKE ERIE RAILROAD COMPANY

— ACQUISITION AND OPERATION —

**CERTAIN RAIL LINES OF CSX TRANSPORTATION, INC. IN ONONDAGA,
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**REPLY OF BESSEMER AND LAKE ERIE RAILROAD COMPANY TO
SUPPLEMENTAL INFORMATION OF FINGER LAKES RAILWAY CORP.**

In accordance with Decision No. 3, Bessemer and Lake Erie Railroad Company (“B&LE”) hereby replies to the Supplemental Information submitted by Finger Lakes Railway Corp. (“FGLK”) on February 14, 2020.

A. The Board Sought Narrow Supplemental Information Whether the Transaction Will Reduce Competition for Customers on FGLK’s Lines.

The Board directed the submission of supplemental information on the potential anticompetitive effect of the Transaction on customers located on FGLK’s lines. Specifically, the Board sought supplemental information about effects on “any shippers whose traffic, post-Transaction, would originate or terminate on FGLK and move to or from points on the Massena Lines”¹ The Board also invited “other interested parties to address potential anticompetitive

¹ Decision No. 3 at 4.

effects on shippers served by FGLK, including information about the degree to which these shippers would be impacted” by Section 5.14(b) of the Purchase and Sale Agreement.² And the Board inquired whether, if it concludes that there is an anticompetitive effect, it should grant FGLK’s request for a trackage rights condition between Woodard and Solvay, NY. The Board did not seek supplemental information on any other topic.

FGLK’s Supplemental Information confirms that there would be no reduction in competition as a result of the Transaction. Notably, no shipper submitted supplemental information in response to the Board’s decision. The record makes clear that the Transaction will not reduce competitive alternatives for shippers on FGLK’s lines, and FGLK’s request for a trackage rights condition between Woodard and Solvay is without basis.

B. FGLK Has Confirmed That No Shippers Move Carloads Between FGLK’s Lines and the Massena Lines.

FGLK has now expressly confirmed there are no shippers that move traffic between FGLK’s lines and the Massena Lines: “FGLK customers do not originate or terminate traffic on the Massena Lines.”³ This means the Transaction cannot and will not have any anticompetitive effects on any such shippers.

C. Overhead Shipments Between FGLK’s Lines and Canada Are Not Affected by the Transaction.

FGLK continues to speak generally of overhead movements to Canada that move over two gateways (Huntingdon and Buffalo), but this just inserts information that has nothing to do with the Massena Lines. While FGLK indicates there are “currently four shippers on FGLK that

² Decision No. 3 at 4.

³ FGLK Supplemental Information at 2.

ship to or from eastern Canada,” FGLK recognizes that this includes customers whose shipments move over the Buffalo gateway and do not move over the Massena Lines.⁴ Yet traffic moving from FGLK customers to eastern Canada over the Buffalo gateway will be unaffected by the Transaction. Shipments moving over FGLK, CSXT, and CNR via the Buffalo gateway now would continue to move that way without change after the Transaction.

Similarly, the small number of overhead shipments that move between points on FGLK’s lines and points in Canada via the Massena Lines will continue to move via the same three carriers after the Transaction that are utilized today – FGLK, CSXT, and the CN System. FGLK attempts to argue that, after the Transaction, shipments between points on FGLK and points in Canada “would see an additional intermediate carrier in the route as they would need to be moved by CSXT, and B&LE between Solvay and the Canadian border.”⁵ FGLK’s argument is incorrectly predicated on a notion that B&LE should be considered an “additional intermediate carrier” distinct from CNR. But traffic moving over B&LE and its indirect parent company, CNR, after the Transaction will move as a single system under a single “CN” routing whether B&LE or CNR owns the track. Although FGLK speculates that rates for customers would increase due to B&LE “wanting a return,”⁶ {{ [REDACTED] }}

⁴ FGLK Supplemental Information at 2 n.1 & 3 n.2 (“Some of the traffic to eastern Canada moving from such customers is currently routed on CSXT through Buffalo, New York.”). B&LE’s Exhibit 1 in its Supplemental Information provides the number of carloads that moved between points on FGLK and Canada with FGLK, CSXT, and Canadian National Railway Company (“CNR”) participating in the movements. B&LE has explained that {{ [REDACTED] }} is the only customer on FGLK that moves any traffic overhead between FGLK’s lines and Canada over the Massena Lines, and FGLK did not present anything in its Supplemental Information that would challenge this evidence.

⁵ FGLK Supplemental Information at 3.

⁶ FGLK Supplemental Information at 3.

B&LE notes that there should be no concern that ownership of the Massena Lines will change at the border. After the Transaction, the U.S. Massena Lines will be owned by B&LE, and the Canadian Massena Lines will be owned by CNR. B&LE understands that today, CSXT owns the U.S. Massena Lines and a subsidiary (St. Lawrence and Adirondack Railway Company) owns the Canadian Massena Lines. The CN System has experience maintaining fluidity at border crossings, and B&LE's operating plan for the U.S. Massena Lines is expected to result in a reduced transit time of approximately 24 hours.⁷ None of these operational characteristics will reduce competitive options for any customers.

CONCLUSION

The record in this proceeding, completed by submission of the supplemental information of B&LE, CSXT, and FGLK, confirms that the Transaction would not have anticompetitive

effects. Accordingly, B&LE respectfully requests that the Board approve the Transaction without any conditions, other than standard labor protective conditions.

Respectfully submitted,

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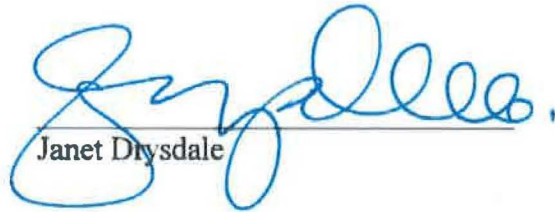
Attorneys for Bessemer and Lake Erie Railroad Company

February 21, 2020

VERIFICATION

I, Janet Drysdale, verify under penalty of perjury under the laws of the United States that I am Vice-President, Financial Planning of Canadian National Railway Company, that I have read the foregoing Reply of Bessemer and Lake Erie Railroad Company to Supplemental Information of Finger Lakes Railway Corp., and that the facts stated therein are true and correct. Further, I certify that I am qualified and authorized to file this Verification on behalf of Bessemer and Lake Erie Railroad Company.

Executed on February 21, 2020.



Janet Drysdale

CERTIFICATE OF SERVICE

I hereby certify that I have, this 21st day of February, 2020, caused copies of the foregoing Reply of Bessemer and Lake Erie Railroad Company to Supplemental Information of Finger Lakes Railway Corp. (designated as BLE-7) on all parties of record listed on the service list in this proceeding, by email, messenger, or first-class mail.

/s/ James M. Guinivan