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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**ATLAS LAND AND BUILDING CORPORATION AND ATLAS
MATERIALS RECYCLING CORPORATION
– PETITION FOR DECLARATORY ORDER –
INDUSTRY SPUR TRACK IN PITTSBURGH, PA**

STB FINANCE DOCKET NO. 36380

REPLY TO PETITION FOR DECLARATORY ORDER

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Dated: March 16, 2020

I. INTRODUCTION

The Petition for Declaratory Order filed by Atlas Land and Building Corporation and Atlas Materials Recycling Corporation (together, “Atlas”) is based on a false premise. According to Atlas, CSX Transportation, Inc. (“CSXT”) obstinately refuses to relinquish an Easement Track¹ over Atlas’s property that CSXT purportedly no longer needs. Tellingly, Atlas does not provide any verified statement or other competent evidence supporting its speculation that the Easement Track “is no longer needed for any legitimate rail purpose.”² Nor can it. As the attached Verified Statement of Carl J. Suedhoff, CSXT’s Director of Track for the Baltimore Division (which includes the Pittsburgh Subdivision) explains, CSXT has regularly used this track before and after the Atlas facility’s closure in 2017 to support its critical railroad maintenance activities in the Pittsburgh area.³

The Easement Track branches off CSXT’s Pittsburgh Subdivision, which supports approximately 20 to 30 freight and Amtrak passenger trains per day.⁴ The Pittsburgh Subdivision runs along the steep bluffs overlooking the Monongahela River and through an urbanized area, and it thus has few locations suitable to stage

¹ The “Easement Track” refers to approximately 400 feet (the “Easement Track”) of an approximately 1,600-foot track (collectively, the “Track” and unless specified otherwise, references to the Track include the Easement Track) connected to CSXT’s mainline double tracks at milepost PY-1.5 in Pittsburgh, Pennsylvania. While Atlas calls the tracks over its property the “Spur Track” and the remainder of the branch the “Connecting Track,” these terms have no basis in the governing real estate documents or the parties’ course of dealings.

² Petition at 7.

³ Suedhoff V.S. ¶¶ 13-15.

⁴ *Id.* ¶ 9.

maintenance of way on-track machinery and equipment for large system level production teams.⁵ The Track is the most efficient location to stage equipment to maintain this important line.⁶ For years, CSXT's system production teams have used the Track to stage on-track machinery and equipment during one or more weeks each year for planned system level maintenance on the Pittsburgh Subdivision, such as track resurfacing and replacing cross ties, ballast, and rail.⁷ CSXT's regular planned system level production work is essential to maintaining a safe and efficient rail network that complies with Federal Railroad Administration (FRA) regulations.

Atlas asserts—without any verification, testimony, or documentation⁸—that CSXT has never used the Easement Track to support maintenance activities except for a “clearly pretextual” effort after Atlas asked CSXT to abandon its easement rights in late 2019. As Mr. Suedhoff's Verified Statement makes clear, that is not true. For each of the past several years, CSXT has regularly used the Track to stage on-track machinery and equipment for its system level production teams. Even prior to the closure of the Atlas facility in 2017, CSXT still used the Track

⁵ *Id.* ¶¶ 16-17, 20.

⁶ *Id.*

⁷ *Id.* ¶¶ 13-15.

⁸ None of the factual allegations in the Petition relating to CSXT's use of the Track are supported by a verified statement. The only verified statement is from a representative of an alleged potential purchaser of Atlas property stating its desire to have CSXT's rail rights removed.

from time to time to stage on-track machinery and equipment for system level production teams working in the area.⁹

Atlas's allegations that CSXT has failed to maintain the Easement Track are equally untrue. CSXT periodically inspects the Easement Track and ensures the Easement Track is suitably maintained for CSXT's continued rail use.¹⁰ Atlas's only support for its allegations to the contrary are photographs taken in May 2019 depicting limited vegetation regrowth at the far end of the Easement Track.¹¹ But natural springtime vegetation regrowth that Atlas captured in a snapshot at the far end of the Easement Track is hardly evidence that the Easement Track is not being maintained, and certainly not evidence that it is not necessary for CSXT's rail transportation purposes. As Mr. Suedhoff's Verified Statement reflects, CSXT used the Easement Track in 2019 and plans to do so again in 2020.¹²

CSXT understands that Atlas now wants to sell its property to a developer and have the Easement Track removed. As CSXT has explained to Atlas, it would be willing to relinquish the Easement Track if, and only if, a similarly suitable and efficient location were made available that would allow CSXT to continue to adequately support system level maintenance activities in the area. Unfortunately, Atlas has so far declined to pursue this option, and instead has opted for litigation.

⁹ Suedhoff V.S. ¶¶ 13-15.

¹⁰ Suedhoff V.S. ¶ 15 n.3; *see* Exhibit 1 (photos taken of the Easement Track on March 5, 2020, showing vegetation control in advance of system level production team use).

¹¹ Petition, Ex. B.

¹² Suedhoff V.S. ¶ 13.

The Board should deny the Petition for Declaratory Order for two reasons. First, the Board should deny the Petition without prejudice because it is premature, unripe, and may be unnecessary. The Petition was filed simultaneously with an action in Pennsylvania state court seeking to have CSXT's easement declared terminated. The Petition asserts correctly that Atlas may not eject CSXT from the Easement Track unless it **both** obtains a court ruling that the easement is invalid under state property law **and** obtains a ruling from the Board that the Easement Track is not essential for the rail transportation network.¹³ Given the broad easement language granting CSXT the right to "continued placement, usage and maintenance" of the Easement Track, CSXT is confident that it will prevail on Atlas's state property law claims in the court proceeding. When the court agrees with CSXT's reasonable interpretation of the easement's plain language, this Board's resolution of the Petition would be moot.

Moreover, Atlas just filed its state court case a few weeks ago, CSXT has not yet filed an answer or responsive motion, and Atlas is nowhere close to obtaining a judicial determination that the easement is terminated under state property law.¹⁴ The Board should not entertain a request to decide an unripe question that may be entirely unnecessary to the resolution of the parties' dispute, particularly in the

¹³ Petition at 7.

¹⁴ As discussed below, that litigation has now been removed to the United States District Court for the Western District of Pennsylvania.

absence of any court request that it do so or any court ruling that makes such a Board determination necessary.¹⁵

Second, if the Board chooses to reach the merits, CSXT plainly has a continuing rail use and need for the Easement Track. Even if one assumes that the Easement Track is properly classified as ancillary spur track (which CSXT does not concede at this time), Mr. Suedhoff's Verified Statement details the ways that CSXT uses the Easement Track and its importance to continued rail maintenance of the Pittsburgh Subdivision. While Atlas has indicated that it no longer wishes to have line haul rail service over the Easement Track, that does not diminish the utility of the Easement Track for CSXT's maintenance of way operations, which ensure CSXT's ability to serve its customers and operate a safe and efficient railroad.

II. BACKGROUND

A. Legal Background of the 1992 Easement

The rail line that is now the Pittsburgh Subdivision has existed for well over a century, and portions of the Atlas property have been used for railroad purposes

¹⁵ Indeed, Atlas may have filed its Petition prematurely as a tactic to obtain early discovery for its court litigation. A few days after Atlas filed its Petition, it served CSXT with 81 purported discovery requests, many of which sought documents and information spanning a twenty-eight-year period and a number of which focus on obtaining information relating to the 1992 easement deed (not information about CSXT's rail operations over the Easement Track). While Atlas's purported discovery is clearly premature and improper, *see Diana Del Grosso—Petition for Declaratory Order*, STB Finance Docket No. 35652, at 3, n.7 (STB served May 8, 2013), the discovery requests suggest that Atlas's purpose in filing this Petition for Declaratory Order may be to fish for information to use in its federal court litigation, where discovery cannot be served until the date of the Rule 26(f) conference. *See* Federal Rule of Civil Procedure 26(d).

for nearly as long. The Pittsburgh & Lake Erie Railroad (“P&LE”) purchased what is now the Atlas Property in fee in 1889. At the time Atlas purchased the property from P&LE in 1993,¹⁶ P&LE had specifically granted an easement to Three Rivers Railway Company (“Three Rivers”) “for the continued placement, usage and maintenance of railroad tracks and facilities, in, on and over that parcel of land of Grantor.”¹⁷ Petition, Ex. D at 1. That easement was to be held for the “use, benefit and enjoyment of Grantee, Grantee’s successors and assigns, forever.” *Id.* at 2-3. The easement would terminate only “if said Easement(s) or right of way, or any portion thereof, shall be abandoned (receipt of official authority to cease rail use or service) or the use thereof completely discontinued by Grantee, its successor(s) or assign(s).” *Id.* at 3. The 1992 deed is referred to hereafter as the “Easement Deed,” and the easement it granted to Three Rivers (now CSXT) is referred to hereafter as the “1992 Easement.”

On August 3, 1993, Atlas purchased the Atlas Property from P&LE, subject to the 1992 Easement. Shortly thereafter, CSXT (which had control over Three

¹⁶ Atlas had operated at the site previously, but it did not purchase a fee interest in the property underlying the Easement Track until 1993.

¹⁷ The easement was granted by the P&LE (“Grantor”) to Three Rivers (“Grantee”) as part of Three Rivers acquisition and operation of the P&LE (*The Three Rivers Railway Company-Acquisition and Operation Exemption-The Pittsburgh and Lake Erie Railroad Company*, ICC Finance Docket No. 32055 (served Sept. 29, 1992)), and CSXT’s acquisition of control of Three Rivers (*CSX Transportation, Inc.-Continuance in Control Exemption-The Three Rivers Railway Company*, ICC Finance Docket No. 32056 (served Oct. 23, 1992)). Atlas became successor to P&LE’s interest when it purchased the real property from P&LE; CSXT is successor by merger to Three Rivers Railway Company’s interest as Grantee.

Rivers) received authority to operate Three Rivers' railroad properties.¹⁸ Three Rivers was eventually merged into CSXT.¹⁹

B. CSXT's Continued Use of and Need for the Easement Track

The Easement Track is the last 400 feet of a 1,600-foot track that connects to the CSXT main line at approximately CSXT railroad milepost PLY 1.5 on the Pittsburgh Subdivision. Suedhoff V.S. ¶¶ 6, 9. Approximately 20 to 30 freight and Amtrak passenger trains travel the double-tracked CSXT mainline on the Pittsburgh Subdivision daily. *Id.* ¶ 9.

When Atlas's recycling facility at the Atlas Property was operational, CSXT primarily used the Easement Track to service that facility. Because CSXT serviced the Atlas facility multiple days a week, CSXT's ability to use the Easement Track for staging purposes was limited and required coordination and scheduling efforts to avoid disruption of rail service to the Atlas plant. *Id.* ¶ 14. Even then, however, CSXT intermittently used the Track to stage on-track machinery and equipment for system level production teams. *Id.* ¶¶ 10-14.

Since Atlas closed its facility in late 2017, the centrally situated Track continues to be the most efficient location to facilitate and stage CSXT's system level production teams working along this segment of the Pittsburgh Subdivision. *Id.* ¶¶ 15-17, 20. This segment of the Pittsburgh Subdivision is located in a densely

¹⁸ *CSX Transp., Inc.—Operation Exemption—The Three Rivers Railway Company*, ICC Fin. Docket No. 32326 (Oct. 5, 1993).

¹⁹ *See CSX Transp. Inc. – Corporate Family Merger Exemption – The Three Rivers Railway Co.*, STB Finance Docket No. 36056 (served Aug. 26, 2016).

populated urban area of Pittsburgh along the south shore of the Monongahela River. Accordingly, CSXT has only limited existing locations available in the area to conduct its staging operations for system level maintenance activities.²⁰ *Id.* ¶ 16.

The Track is uniquely suitable for this task on the Pittsburgh Subdivision, because it provides enough clearance from the mainline to allow CSXT trucks and other non-rail vehicles to safely and directly access on-track rail equipment on the Easement Track. *Id.* ¶ 17. Moreover, the Track is necessary as a location for CSXT system level production teams to stage and mobilize equipment and crews without disrupting mainline traffic. *Id.* The Track is necessary to stage all of the on-track railroad maintenance machinery and equipment used by CSXT's large system-level production teams each year. *Id.* ¶¶ 10-12, 16-17.

Importantly, CSXT has in the past required, and continues to require, the use of the entire 1600 feet of the Track, including the last 400 feet of the Easement Track. The large production teams often have twenty to thirty on-track vehicles and pieces of equipment that require the use of the entire Track to stage and store them all. *Id.* ¶ 12. Given the large size of the system level production teams, the

²⁰ As Mr. Suedhoff explains, the closest alternative location in the Pittsburgh Subdivision for conducting this type of staging is Beck's Run Siding, which is located about two miles east and runs adjacent to a single mainline track with limited clearance for non-rail vehicles or equipment. Suedhoff V.S. ¶ 18. However, for reasons explained by Mr. Suedhoff, Beck's Run Siding provides much less operational flexibility, requires disruptions to mainline rail operations, and is often unavailable because it is already used as an overflow storage track for Demmler Yard, as a passing track for mainline rail traffic, and to facilitate local rail service to a nearby customer. *Id.* ¶¶ 18, 20.

400 feet of the Easement Track are also essential to CSXT's vital rail maintenance activities in the area. *Id.* ¶¶ 10-12, 16-17.

The Petition wrongly suggests that CSXT could conduct its staging operations at CSXT's Demmler Yard or CSXT's Pittsburgh Intermodal Rail Terminal.²¹ Both of these locations are impractical and much less efficient than the Track. *Suedhoff V.S.* ¶ 19. Each of these yard facilities is located a significant distance from the Track (approximately 13 and 5 railroad miles from PLY 1.5, respectively) and thus would require significant additional time to mobilize and move equipment and materials to conduct the regular system level maintenance programs. *Id.* Moving production teams and equipment long distances on a daily basis is inefficient and requires track time that disrupts CSXT's mainline freight rail operations and passenger trains traveling on the Pittsburgh Subdivision. *Id.* ¶ 19. Moreover, these busy yard facilities have limited capacity and are not efficiently configured for the staging and mobilization of system production teams. *Id.*

C. CSXT's Good Faith Discussions With Atlas

On June 6, 2019, counsel for Atlas sent a letter to CSXT asserting that CSXT's rights to use the Easement Track had been terminated once the Atlas facility closed. CSXT responded by explaining that the Easement Track "continues to be used for freight rail purposes" and offering to meet with representatives about its continued need to use the Track for railroad operations.²²

²¹ Petition at 6.

²² See Petition, Ex. E (June 2019 email from K. Bongiovanni).

CSXT met with representatives of Atlas and Greystar GP II, LLC (“Greystar”) in August 2019, and CSXT explained its continuing need to use the Easement Track to support critical rail maintenance activities. CSXT explained that it could not consider relinquishing the Easement Track unless Atlas was willing to provide a similarly efficient location suitable for CSXT’s existing rail uses of the Track.²³ Atlas did not pursue this option.

Instead, on the same day it filed the Petition for Declaratory Order, Atlas filed a six-count Complaint against CSXT in the Allegheny County Court of Common Pleas, alleging purported causes of action for declaratory judgment, ejectment, trespass, breach of contract, tortious interference with contractual relations, and inverse condemnation. Atlas has asked the court to declare that the Easement Deed was terminated as to the Easement Track and to eject CSXT from continued use of the Easement Track. On March 13, 2020, CSXT timely removed the case to federal court based on diversity jurisdiction. CSXT has not filed an answer or any other responsive pleading, and no discovery has been served in the pending federal court litigation.²⁴

As mentioned above, Atlas has already attempted to begin discovery for this Petition for Declaratory Order by serving CSXT with 81 purported discovery

²³ After the meeting, CSXT followed up with an email explaining logistical factors to be considered and offering to identify rail engineering firms that could assist Atlas. *See Exhibit 2* (Sept. 2019 email from C. Adkins).

²⁴ Discovery cannot be considered served in the federal court proceeding unless and until the parties conduct the required Federal Rule of Civil Procedure 26(f) conference, which has not yet been scheduled.

requests, many of which demand information going back to 1992.²⁵ Indeed, a number of the discovery requests are targeted at information that could only be relevant to the court case, such as “all documents” since 1992 relating to the Easement Deed and requests for admission about the chain of title and parties’ relevant real estate rights.²⁶

III. ARGUMENT

A. The Petition Is Premature and Should Either Be Dismissed Without Prejudice or Stayed.

The declaratory order that Atlas seeks will neither “terminate a controversy” nor “remove uncertainty.” 5 U.S.C. § 554(e). The fundamental “controversy” and “uncertainty” in this dispute is the Pennsylvania state law question of whether the Easement Deed has terminated. No decision by this Board will shed light on these questions or move the court case toward a final resolution. Accordingly, CSXT requests that the Board dismiss the Petition without prejudice, or, in the alternative, hold any ruling on the merits of the Petition in abeyance pending a ruling and/or referral from the federal court.

²⁵ See Exhibit 3, Atlas Discovery Requests (Feb. 26, 2020). CSXT has informed Atlas that such purported discovery is premature and improper, since the Board has not even instituted a proceeding, let alone one allowing for discovery. See *Diana Del Grosso—Petition for Declaratory Order*, STB Finance Docket No. 35652, at 3, n.7 (STB served May 8, 2013) (agreeing that there is no “proceeding” for the purposes of § 1114.21(a)(1) until the Board chooses to institute a proceeding); 49 C.F.R. § 1114.21 (permitting discovery only for matters “relevant to the subject matter involved in a proceeding”).

²⁶ See, e.g., Exhibit 3, at Requests for Admission 1-8 and Request for Production 4.

Declaratory order proceedings are only authorized when a declaratory order would “terminate a controversy” or “remove uncertainty.” 5 U.S.C. § 554(e). And whether to institute a declaratory order proceeding is a question that is committed to the Board’s “sound discretion.”²⁷ Factors the Board considers when deciding whether to initiate a declaratory order proceeding are “the ripeness of the controversy and whether a proceeding is necessary to terminate an active controversy.”²⁸ For this reason, the Board routinely has declined to use its discretion to open declaratory order proceedings for questions that are moot, unripe, or that have not yet been presented.²⁹ And the Board similarly has declined to opine on the validity of a railroad’s real property rights, holding that such issues are “best left to the courts.”³⁰

²⁷ 5 U.S.C. § 554(e); *see also Association of American Railroads—Petition for Declaratory Order*, at 1, STB Fin. Docket No. 36369 (served Feb. 19, 2020) (“The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty.”).

²⁸ *Union Pac. R.R. Co.—Pet. for Decl. Order—Imposed Interchange Charges*, at 3–4, STB Docket No. 42052 (served June 13, 2000).

²⁹ *See, e.g., JGB Properties, LLC—Petition for Declaratory Order*, STB Fin. Docket No. 35817 at 7 (served May 22, 2015) (declining to open declaratory order proceeding to determine status of tracks where that determination would have no bearing on state court’s decision); *United States Environmental Protection Agency—Petition for Decl. Order*, at 1, 5-6, STB Fin. Docket No. 35803, (served Dec. 30, 2014) (denying EPA petition for declaratory order because “[a] declaratory order at this time would be premature” since the issue was not “ripe for review”).

³⁰ *Holland Park Owner, LLC—Pet. for Declaratory Order*, at 3, STB Fin. Docket No. 36308 (Jan. 6, 2020) (“The determination of the scope of the easement and whether the easement still exists would involve questions of state property law and is the type of issue best left to the courts.”); *see, e.g., STB Finance Docket No. 35316, Allied Erecting & Dismantling, Inc. & Allied Industrial Development Corp.—Petition for Declaratory Order—Rail Easements in Mahoning County, Ohio*, at 10

Here, Atlas admits that “all disputes between the parties relating to the apparent termination of CSXT’s easement rights on the Atlas Property” are before the court, and that “Atlas does not seek the Board’s involvement in the resolution of the state law easement or deed issues.” Petition at 7. Atlas nonetheless asks the Board to begin a declaratory order proceeding now. Atlas’s theory appears to be that **IF** Atlas convinces a court to rule that the Easement Deed has terminated and **IF** after such a ruling CSXT chooses to maintain that the Board retains jurisdiction over the Easement Track regardless of the status of the 1992 Easement, **THEN** a declaratory order that the Board does not have jurisdiction over the Easement Track would be necessary for a court to eject CSXT from the Easement Track.

This chain of hypothetical events will likely never come to pass. The only way that a declaratory order from this Board could help resolve uncertainty or end controversy would be if Atlas had already convinced the federal court to ignore the broad easement language permitting CSXT’s continued use of the 1992 Easement for railroad purposes and thus terminate CSXT’s broad railroad operating easement pursuant to state law. Without such a threshold determination, this Board’s order would not be based upon a complete record and would do nothing to resolve the parties’ fundamental underlying dispute.

(STB served Sept. 17, 2015) (“agreements governed by state law are generally best interpreted by state courts” and, with regard to whether a party is entitled to terminate an easement, “[t]he state court is better positioned than the Board to address a question of state property law”).

Atlas argues that “[b]oth the state court and the STB will need to rule on the related but separate issues placed before them ... [because] elimination of STB jurisdiction over the Spur is necessary for the court to have the authority to remove CSXT from the Atlas Property.”³¹ But that is only true if Atlas prevails in its argument to the court that CSXT’s railroad easement should be terminated. If Atlas does not prevail, then the Board will not need to rule on anything.

Atlas also relies on a footnote from *Pinelawn*, which Atlas argues holds that a petition for declaratory order is the right mechanism for determining whether the Board retains jurisdiction over ancillary track.³² It is true enough that a petition for declaratory order is the appropriate way to determine the status of track that is excepted from the Board’s abandonment authority. But *Pinelawn* did not change the statutory requirement that declaratory orders should only be used to terminate controversies or remove uncertainties, nor did it alter the baseline standards that the Board has used to guide its discretion for instituting declaratory order proceedings.

Indeed, *Pinelawn* actually helps to illustrate the premature nature of Atlas’s petition for declaratory order. In *Pinelawn*, the petition for declaratory order was filed after a state court had found that it needed the Board to address certain questions and “directed Pinelawn to seek the Board’s guidance.” *Pinelawn* at 4. In

³¹ Petition at 7.

³² Petition at 1 n.1 (citing *Pinelawn Cemetery—Pet. for Declaratory Order*, at 11 n.31, STB Fin. Docket No. 35468 (served Apr. 21, 2015)).

contrast, this is not a situation in which a court has referred a question to the Board or issued a decision that requires the Board's input.³³ Court proceedings have only just commenced, and the resolution of those proceedings will determine whether the Board's views on the status of the Easement Track are even necessary. The Board has rightly been reluctant to institute declaratory judgment actions that would parallel ongoing court proceedings, particularly when the result of those court proceedings could obviate the need for Board action.³⁴

In sum, the Board should not exercise its discretion to institute a declaratory order proceeding at this early stage of the parties' overall dispute, where the court litigation has barely begun. Rather, the resources of the Board and the parties would be better served by dismissing the Petition without prejudice or, alternatively, staying action on Atlas's Petition pending the final outcome of the federal court litigation.

³³ See, e.g., *Teck Metals Ltd.—Petition for Decl. Order—Practices of Wheeling & Lake Erie Railway Co.*, at 1, STB Fin. Docket No. 35324, (served Jan. 22, 2010) (“petitions for issuance of a declaratory order premised on a court referral are routinely accepted”); cf. *United States Environmental Protection Agency—Petition for Decl. Order*, STB Fin. Docket No. 35803, at 1, 5-6 (served Dec. 30, 2014) (holding that “[a] declaratory order at this time would be premature” because issue was not “ripe for review”).

³⁴ See, e.g., *Ballard Terminal Railroad Co.—Petition for Declaratory Order*, at 4, STB Fin. Docket No. 36261 (served June 27, 2019) (deciding to hold request for declaratory order in abeyance pending outcome of state court litigation, which “would possibly moot” the need for Board action).

B. Even if the Easement Track Were Ancillary Track, It Is Needed For the Interstate Rail System.

Even assuming that the Easement Track is and always has been ancillary spur track,³⁵ Atlas has fallen far short of its burden to prove that the Easement Track is “no longer needed for the interstate rail system.” *Pinelawn* at 9. Atlas’s summary of the legal standard is reasonably accurate: the Board considers the totality of the circumstances when determining whether track should remain within its jurisdiction as part of the national rail system. *See NewVista Property Holdings, LLC – Pet. for Declaratory Order*, STB Fin. Docket No. 36050, at 2 (served Mar. 17, 2017).

Where Atlas goes wrong is in its understanding of the facts—Atlas asserts that CSXT made no use of the Easement Track whatsoever except for a “pretextual” use after Atlas asked CSXT to abandon its easement in June 2019. Mr. Suedhoff’s Verified Statement shows that Atlas is mistaken. *Suedhoff V.S.* ¶¶ 13-15. After

³⁵ For purposes of this Reply, CSXT is willing to assume that the Easement Track is spur track that does not require Board authority to be abandoned. CSXT notes, however, that if a track were once properly classified as a line of railroad, its classification cannot change because it was later used as ancillary track. *See City of Jersey City et al. – Petition for Declaratory Order*, STB Docket No. 34818 at 10 (served Aug. 9, 2007) (railroad’s “actions alone could not remove the need for it to obtain appropriate Federal abandonment authority”), *citing The Atchison, Topeka and Santa Fe Railway Company – Abandonment Exemption – in Lyon County, KS*, Docket No. AB-52 (Sub-No. 71X), at 5 (ICC served June 17, 1991) (“Because this track was clearly part of a rail line at one time, we find that it cannot be converted into an exempt spur . . . solely through the railroad’s unilateral decision to change its use of the track segment over time.”).

CSXT reserves its rights to conduct a full investigation into the history of the track and potentially to challenge Atlas’s assumption that the Easement Track is ancillary spur track.

Atlas stopped receiving rail service, CSXT continued to use the Easement Track to stage and perform critical rail maintenance activities within the Pittsburgh Subdivision. *Id.* Even though Atlas stopped requesting rail service over the Easement Track, it continues to be needed for the interstate rail system in order to support CSXT's system level maintenance programs on the Pittsburgh Subdivision. *Id.* ¶¶ 10-17, 20. Thus, it is an essential part of the rail service that CSXT provides to all customers whose traffic moves over the Pittsburgh Subdivision. If CSXT cannot maintain its tracks effectively, it risks noncompliance with FRA safety rules and negative impacts on efficient rail service.

Atlas's claims that CSXT could use other parts of its network to stage maintenance activities are mere conjecture. As Mr. Suedhoff explains, the Track is the most efficient location for CSXT to stage equipment for system level maintenance programs on this segment of the Pittsburgh Subdivision. *Id.* ¶¶ 17, 20. Each of the other potential locations is much less convenient and far less efficient for CSXT's rail maintenance purposes. *Id.* ¶¶ 17-20. Specifically, Atlas's suggestion that CSXT ought instead to stage its maintenance of way equipment and supplies at the Pittsburgh Intermodal Rail Terminal or Demmler Yard is impractical and inefficient. *Id.* ¶ 19. Those locations are fully occupied with supporting line-haul service to customers, and neither is configured to stage and mobilize system production teams. *Id.* ¶ 19. Moreover, they are not centrally located like the Track. *Id.* Atlas has no right to dictate operational terms to CSXT,

particularly not terms that would be materially less efficient and more costly and that would interfere with CSXT's ability to provide fluid service at those yards.

It is true that, since Atlas closed its facility, CSXT does not need the Easement Track to directly provide line-haul service to Atlas. But CSXT's demonstrated historic, current, and planned future need to use the Easement Track to support maintenance of the Pittsburgh Subdivision is no less of an essential rail purpose. Indeed, CSXT's usage is analogous to the yard portions at issue in *Pinelawn*. The question the Board answered in *Pinelawn* was not whether the railroad could get by with using other parts of the yard in question or moving switching activity to another location. The railroad was plainly using ancillary tracks to support its rail service to customers, and that was the end of the matter. CSXT is using the Easement Track to support its interstate rail operations and that should be the end of the matter here as well.

IV. CONCLUSION

For the reasons above, the Board should deny Atlas's Petition for Declaratory Order without prejudice as premature, or, in the alternative, hold any decision on the Petition in abeyance pending a final decision from the federal court. If the Board instead chooses to address the merits now, it should find that, even assuming that the Easement Track is ancillary track, it is needed for the CSXT's continued interstate rail operations and is therefore within the Board's jurisdiction, and the Board should not issue an order declaring its jurisdiction over the Easement Track to be terminated.

Respectfully submitted,

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Dated: March 16, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March 2020, I caused a copy of the foregoing Reply to Atlas Land and Building Corporation and Atlas Materials Recycling Corporation's Petition for Declaratory Order to be served by first class mail or more expeditious means upon:

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/s/ Morgan B. Lindsay
Morgan B. Lindsay

**VERIFIED STATEMENT OF
CARL J. SUEDHOFF**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36380

CSX TRANSPORTATION INC.

REPLY TO PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT OF CARL J. SUEDHOFF

1. My name is Carl J. Suedhoff. I am an adult individual over the age of eighteen years and am competent to make this Declaration. Unless stated otherwise, the facts herein are from my own personal knowledge or my review of business records kept in the ordinary course of business by CSX Transportation, Inc. ("CSXT").

2. I am currently the Director of Track on the Baltimore Division for CSXT. The Baltimore Division includes the Pittsburgh Subdivision. I have held this position since June 2018. My job duties and responsibilities include supervising the maintenance of approximately 750 miles of CSXT tracks and associated rail facilities, including mainline tracks, other tracks, and yards.

3. Prior to my current position, I was an Assistant Division Engineer on the Baltimore Division from March 2017 to June 2018. From April 2014 to March 2017, I was a Roadmaster on the RF&P Subdivision of the Baltimore Division in Northern Virginia. From 2011 until April 2014, I was the Roadmaster on the Pittsburgh Subdivision, including approximately 77 miles of CSXT mainline tracks, plus other tracks and yards, in the Pittsburgh area.

4. CSXT is a Class I railroad and one of the largest rail transportation companies in the United States. CSXT provides freight rail transportation services across a rail network consisting of approximately 21,000 railroad route miles linking communities and commercial markets in 23 states (including the Commonwealth of Pennsylvania), the District of Columbia, and two Canadian provinces.

5. In my Director of Track position, I manage five Roadmasters assigned to my territory, including the Roadmaster assigned to the Pittsburgh Subdivision. In addition, I also manage approximately 110 other maintenance-of-way employees.

6. I am aware that Petitioners Atlas Land and Building Corporation and Atlas Materials Recycling Corporation (collectively “Atlas”) recently filed a petition asking the Surface Transportation Board to open a proceeding to relinquish jurisdiction over approximately 400 feet (the “Easement Track”) of an approximately 1,600-foot track (collectively, the “Track” and unless otherwise specified herein the Track includes the Easement Track) connected to CSXT’s mainline double tracks in Pittsburgh, Pennsylvania. The Easement Track is a tangent segment of track approximately 400 feet in length with an easement area 30 feet in width extending 15 feet from the centerline of the single track.¹

7. I am also aware that Atlas recently filed an action for ejectment against CSXT in the Court of Common Pleas of Allegheny County, Pennsylvania seeking to prevent CSXT from continuing to use the Easement Track for railroad operations.

¹ Based on my review of CSXT’s real property records, it is my understanding that CSXT’s predecessor railroad acquired its interest in the Easement Track pursuant to a recorded September 11, 1992 Easement Deed between The Pittsburgh and Lake Erie Railroad Company, as Grantor, and The Three Rivers Railway Company, as Grantee (now CSXT).

8. In my current role as Director of Track and based upon my prior experience as the Roadmaster on the Pittsburgh Subdivision, I am familiar with the configuration and uses of the Track. I am also generally familiar with CSXT's past, current, and future planned rail transportation operations and engineering maintenance activities on the Pittsburgh Subdivision, including the planned system level track and rail maintenance programs.

9. The Track is located at approximately CSXT railroad milepost PLY 1.5 on CSXT's main rail corridor between Connellsville and New Castle, Pennsylvania (the "Pittsburgh Subdivision"). Rail traffic on the Subdivision consists of freight trains, as well as Amtrak passenger trains. Approximately 20 to 30 freight and passenger trains travel the CSXT mainline on the Pittsburgh Subdivision daily.

10. During my tenure as Director of Track on the Pittsburgh Subdivision, CSXT has repeatedly used the Track as a key staging and storage area for on-track equipment and vehicles used to perform system level maintenance on CSXT's mainline tracks, including: (i) the installation and/or replacement of cross ties, ballast, switches and rail; and/or (ii) track resurfacing. In my experience, the Track is used as a staging area for an approximately 10 to 15 mile stretch of CSXT's rail corridor running along the southern bank of the Monongahela River between Braddock, Pennsylvania and Coraopolis, Pennsylvania.

11. For the past several years and during many prior years, CSXT production teams have been working in this area of the Pittsburgh Subdivision. Each CSXT production team will typically use the Track for one or more weeks at a time.

Although the system level maintenance schedule varies by year, more than one production team may need to use the Track for staging purposes in any given year.

12. CSXT's system level production teams often utilize 20 or 30 pieces of on-track machinery to perform their maintenance activities. For such production teams, CSXT's use of the Easement Track is necessary to safely and efficiently stage/store all of the required on-track rail maintenance equipment.

13. I understand that Atlas has suggested that CSXT used the Easement Track to stage on-track maintenance equipment for the first time after August 2019.² This is not true. To the contrary, CSXT has consistently used the Easement Track as a staging location for CSXT's system level maintenance programs during each of the past several years (and during earlier years at least on an intermittent basis). Furthermore, CSXT plans to use the Easement Track for staging purposes again in 2020 (and likely for many years to come).

14. During my tenure as Roadmaster on the Pittsburgh Subdivision, CSXT used the Track to provide rail service to the Atlas recycling facility. Because CSXT serviced the Atlas facility multiple days a week, CSXT's ability to use the Track for staging purposes was limited and required coordination and scheduling efforts to avoid disruption of regular rail service to the Atlas plant. Even then, however, CSXT still occasionally used the Track to stage on-track maintenance equipment for system level production teams working in the area.

² As part of CSXT's production staging operations in late 2019 or early 2020, CSXT inadvertently and temporarily stored used cross ties outside of the 30 foot wide Easement Track area on the Atlas property. CSXT promptly removed and relocated the cross ties after Atlas informed CSXT that certain ties had been stored on Atlas-owned property.

15. After rail service to the Atlas facility ceased in late 2017, CSXT was able to use the Track for staging purposes more frequently and without the need to limit the use of the Track to windows between scheduled rail service to the Atlas facility.³

16. CSXT's mainline rail corridor in this area is located in a geographically constrained and densely populated urban area of Pittsburgh along the south bank of the Monongahela River. Accordingly, CSXT only has limited existing locations available along its mainline to conduct its staging operations for system level maintenance activities on this segment of the Pittsburgh Subdivision.

17. The centrally situated Track is the most efficient location to facilitate and stage CSXT's system level production teams working in this vicinity. By way of example, the Easement Track location and configuration provides sufficient clearance from the double mainline so that CSXT employees and non-rail vehicles can directly access equipment stored on the Easement Track without fouling the mainline tracks. Moreover, the Track allows CSXT to safely and efficiently stage the production team equipment without disrupting rail traffic on the mainline tracks.

18. The closest alternative staging location in this area of the Pittsburgh Subdivision is Beck's Run Siding located approximately two miles east at CSXT railroad mileposts PLY3.4-PLY6.4. Beck's Run Siding is located adjacent to a single mainline track with limited clearance for equipment or other non-rail vehicles. In order to stage and mobilize equipment and production teams from Beck's Run Siding, CSXT employees must obtain track time and track protection due to the proximity to

³ Since the Atlas facility's closure in late 2017, CSXT has continued to periodically inspect the Track.

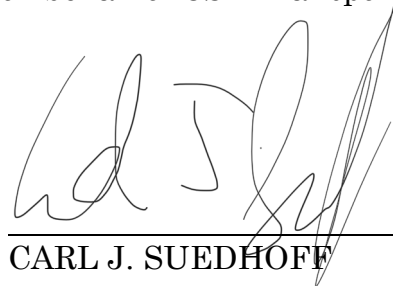
the mainline track. Unlike the Track, Beck's Run Siding is connected to a single mainline, which provides much less operational flexibility and requires disruptions to mainline rail operations. Moreover, Beck's Run Siding is often unavailable due to use as an overflow storage track for Demmler Yard, as a passing track for mainline rail traffic, and/or to facilitate local rail service to a nearby customer.

19. I understand that Atlas has suggested that CSXT could conduct its staging operations at CSXT's Demmler Yard or CSXT's Pittsburgh Intermodal Rail Terminal. As generally shown on the map attached as Exhibit F to the Atlas Petition, both of these locations are a significant distance from the Track (approximately 13 and 5 railroad miles from PLY 1.5 respectively) and thus would require significant additional time to mobilize and move equipment and materials to conduct the system maintenance programs. Moving production teams and equipment long distances on a daily basis is inefficient and requires track time that reduces the efficiency and capacity of CSXT's freight rail operations. Moreover, these busy yard facilities have limited track capacity for use to stage system production teams.

20. The Track is the most efficient location for CSXT to stage equipment for system level maintenance programs on this segment of the Pittsburgh Subdivision. Each of the other potential locations are much less convenient and far less efficient for purposes of staging equipment for system level maintenance programs.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Furthermore, I certify that I am qualified and authorized to submit this verified statement on behalf of CSX Transportation, Inc.

Executed on March 16, 2020.



CARL J. SUEDHOFF

EXHIBIT 1

Photos of Easement Track, March 5, 2020











EXHIBIT 2

Sept. 2019 email from C. Adkins

From: Adkins, Catherine

Sent: Friday, September 6, 2019 10:22 AM

To: Metz, B. Lafe <lafe.metz@bipc.com>; stanley.parker@bipc.com; lestermparker@gmail.com; twigfield@greystar.com

Cc: Bongiovanni, Kim <Kim_Bongiovanni@CSX.com>; Schulte, David <David_Schulte@csx.com>

Subject: Atlas Land Engineering Request; Pittsburg PA

Atlas Team & Todd,

It was nice to meet all of you last week to discuss the rail easement in Pittsburgh, PA. During the meeting Atlas asked if it would be possible to relocate the tracks in order to allow for development of the Atlas property. I discussed briefly with my engineering team. The engineering team immediately noted the issues below but thought a more depth in look at the site and design plans might help determine the possibility. In order to progress an engineering study, Atlas would need to execute a preliminary engineering agreement with CSX and provide a deposit of \$25k for the review. As part of the review process CSX engineering could recommend engineering companies to help Atlas with design plans.

Topography and obstruction issues:

The Atlas property and adjacent rail corridor have grade differences

There is block wall separating the properties

The bridge supports may obstruct a relocation

In addition, as mentioned during the meeting, if the relocation is possible CSX would require the following:

Monetary compensation to move forward with the project

Atlas would be required to construct the tracks and to reimburse CSX for any and all costs CSX would incur due to the project/conveyance/release of easement

Atlas would need to convey the underlying property in fee to CSX

Please let me know if you would like to move forward with investigating this option.

Cat Adkins - CSX Transportation, Inc.

Real Estate and Facilities Management

Regional Manager – Operating East Region, Nashville, TN

500 Water Street, 12th Floor J180, Jacksonville, FL 32202

Off. 904-279-4537

E-mail catherine_adkins@csx.com

EXHIBIT 3

Atlas Discovery Requests, Feb. 26, 2020

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

THOMAS J. HEALEY
(312) 252-1505
thealey@fletcher-sippel.com

February 26, 2020

VIA ELECTRONIC AND U.S. MAIL

Kim R. Bongiovanni, Esq.
Assistant General Counsel
CSX Transportation, Inc.
500 Water Street, J150
Jacksonville, FL 32202

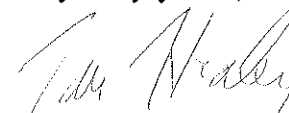
Re: **Docket No. FD 36380**
Atlas Land and Building Corporation and Atlas Materials
Recycling Corporation – Petition for Declaratory Order –
Industry Spur Track in Pittsburgh, PA

Dear Ms. Bongiovanni:

Enclosed please find The First Set of Interrogatories to Respondent CSX Transportation, Inc., the First Set of Requests for Admission to Respondent CSX Transportation, Inc., and the First Set of Requests for Production of Documents to Respondent CSX Transportation, Inc.

Please let me know if you have any questions.

Very truly yours,



Thomas J. Healey

TJH/dg

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36380

ATLAS LAND AND BUILDING CORPORATION AND
ATLAS MATERIALS RECYCLING CORPORATION
– PETITION FOR DECLARATORY ORDER –
INDUSTRY SPUR TRACK IN PITTSBURGH, PA

**FIRST SET OF INTERROGATORIES
TO RESPONDENT CSX TRANSPORTATION, INC.**

Thomas J. Litwiler
Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR ATLAS LAND AND
BUILDING CORPORATION and ATLAS
MATERIALS RECYCLING CORPORATION**

Dated: February 26, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36380

ATLAS LAND AND BUILDING CORPORATION AND
ATLAS MATERIALS RECYCLING CORPORATION
– PETITION FOR DECLARATORY ORDER –
INDUSTRY SPUR TRACK IN PITTSBURGH, PA

**FIRST SET OF INTERROGATORIES
TO RESPONDENT CSX TRANSPORTATION, INC.**

Pursuant to 49 C.F.R. § 1114.26 and the following Definitions and Instructions, Petitioners Atlas Land and Building Corporation (“Atlas Land”) and Atlas Materials Recycling Corporation f/k/a Atlas Waste Paper Corporation (“Atlas Materials,” and collectively with Atlas Land, “Atlas” or “Petitioners”) hereby request that Respondent CSX Transportation, Inc. (“CSXT”) answer to the below First Set of Interrogatories.

DEFINITIONS AND INSTRUCTIONS

1. “Atlas Land” shall mean Petitioner Atlas Land and Building Corporation and any of its respective agents, legal representatives, attorneys, directors, officers or employees.
2. “Atlas Materials” shall mean Petitioner Atlas Materials Recycling Corporation f/k/a Atlas Waste Paper Corporation and any of its respective agents, legal representatives, attorneys, directors, officers or employees.
3. “Atlas” shall mean Atlas Land and Atlas Materials.
4. “CSXT” shall mean Respondent CSX Transportation, Inc. and any of its respective agents, legal representatives, attorneys, directors, officers or employees.

5. “Petition” shall mean the Petition for Declaratory Order filed by Atlas in the above-captioned proceeding on February 11, 2020.

6. The “Atlas Property” shall mean parcel numbers 12-G-164-0-1, 12-G-165, 12-G-170, 12-G-178, 12-G-168 and 12-G-155 located in Allegheny County, Pennsylvania upon which Atlas’ now-vacant warehouse is situated.

7. The “Spur” shall mean the 400’ segment of railroad track identified in the Petition.

8. “Greystar” shall mean Greystar GP II, LLC.

9. The “Easement Deed” shall mean the Easement Deed dated September 11, 1992 between Pittsburgh and Lake Erie Railroad Company, as grantor, and Three Rivers Railway Company, as grantee, pursuant to which Pittsburgh and Lake Erie Railroad Company granted an easement to Three Rivers Railway Company over the land owned by Atlas Land. The Easement Deed is attached to the Petition as Exhibit D.

10. “Document” or “documents” shall mean any written, typed, printed, filmed, recorded or graphic matter, however produced, reproduced or stored, of any type of description, including, without limitation, all originals and non-identical copies of the following items, in the actual or constructive possession, custody or control of CSXT or any of its agents, parents companies, subsidiaries, affiliates, representatives, accountants, or attorneys. “Documents” include agreements, books, records, letters, electronic communications, e-mails (in any form), accounts, notes, summaries, diaries, desk calendars, work sheets, reports, communications, including intra-company communications, correspondence, cablegrams, radiograms, telegrams, telexes, faxes, memoranda, facebook messages/posts, summaries, text messages, voicemails, notes and records of telephone conversations, meetings and conferences, notes and records of personal conversations or interviews, price lists, ledgers, invoices, purchase orders, change orders, contracts, notices, drafts of

any documents, marginal or other comments or notes appearing on any documents, business records, maps, charts, plans, drawings, blueprints, specifications, schedules, computer printouts, computer database(s), computer tapes, receipts, computer discs, microfilm, video recordings, tapes or other voice recordings and transcriptions thereof and data compilations from which information can be obtained or translated.

11. “Communication” (or forms thereof) shall mean any transmission of information, the information transmitted, and any process by which information is transmitted and shall include written communications, oral communications and digital and electronic communications.

12. “Relating” (or forms thereof) shall mean pertaining, constituting, reflecting, evidencing, representing, supporting, contradicting, referring, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating or relevant.

13. The singular shall be deemed to include the plural and vice versa. The feminine shall be deemed to include the masculine and vice versa. The word “and” shall be deemed to include the disjunctive “or” and vice versa “any” shall also mean “all” and vice versa.

14. In the event any responsive documents existed at some time but no longer exist or were in the possession or control of CSXT at some time but no longer are in CSXT’s possession or control, state: (i) their current custodian and whereabouts; (ii) when CSXT last had possession or control of such documents and the date and location of such most recent possession and control; and (iii) the individual or entity to whom possession or control of such documents was provided by CSXT and the date, location and reason for the providing of such possession or control.

15. In the event any responsive document is not produced due to any claim of privilege or other protection against disclosure, state: (i) the date, author and recipients of such document; (ii) the subject matter and circumstances of generation of such document sufficient to enable the Court

to determine whether the assertion of the alleged privilege or protection against disclosure is warranted under the circumstances; and (iii) the legal privilege or protection against disclosure being relied upon in withholding production.

16. "Identify" when used in reference to a person, business, entity or firm, means to state the full name of such person, business or entity and the person's address, telephone number and current employment affiliation or the entity or firm's address and telephone number of its principal place of business.

17. "Identify" when used in reference to a Document and/or Communication means to identify the date of the Document and/or Communication, the author of the Document and/Communications, the recipient(s) of the Document and/or Communication and, where applicable, the Bates number already assigned to said Document and/or Communication by CSXT or Atlas.

18. "Person" means any individual or any cognizable entity including, without limitation, corporations, proprietorships, partnerships, joint ventures, consortiums, clubs, associations, unions, foundations, government agencies or instrumentalities, societies or any other group.

19. These Interrogatories shall be deemed continuing in nature to the extent provided by the regulations of the Surface Transportation Board.

20. Unless otherwise stated in the Interrogatory, each Interrogatory shall be limited to the time period from and including January 1, 1992 to present.

INTERROGATORIES

1. Describe in detail the manner in which CSXT has maintained records relating to the Spur, the placement of freight cars on the Spur, the placing of maintenance of way equipment

on the Spur, the placement of any materials by CSXT on the Atlas Property, or other use by CSXT of the Spur or Atlas Property.

ANSWER:

2. Identify each and every date from January 1, 2017 to present on which CSXT utilized the Spur for the purpose of providing freight rail servicing to Atlas' facility.

ANSWER:

3. Identify each and every date from January 1, 2017 to present on which CSXT utilized the Spur or Atlas Property for any purpose other than providing freight rail servicing to Atlas' facility and, for each such date, identify the purpose for which CSXT utilized the Spur or Atlas Property.

ANSWER:

4. Set forth and describe any and all maintenance performed by CSXT on the Spur including the date(s) of such maintenance and the manner of work performed on the Spur.

ANSWER:

5. Identify all individuals who are and/or have been responsible for maintenance of the Spur and, for all identified individuals, please set forth their full name, dates of employment at CSXT, job title, responsibilities and the dates (or date range) each such identified individual was responsible for maintenance of the Spur and, to the extent not currently employed by CSXT, identify their last known address.

ANSWER:

6. For the period from and after January 1, 2017 through the present, identify each and every communication between CSXT and any third party relating to freight rail service on the Spur.

ANSWER:

7. For the period from and after January 1, 2017 through the present, identify each and every communication between or among CSXT agents and/or CSXT employees relating to freight rail service on the Spur.

ANSWER:

8. For the period from and after January 1, 2017 through the present, identify each and every communication between CSXT and any third party relating to use of the Spur for any purpose other than freight rail service.

ANSWER:

9. For the period from and after January 1, 2017 through the present, identify each and every communication between or among CSXT agents and/or CSXT employees relating to use of the Spur for any purpose other than freight rail service.

ANSWER:

ANSWER:

10. Identify all reasons why the track connecting the Spur to CSXT's main line (identified as the "Connecting Track" in the Petition) could not be used for parking the on-track maintenance of way equipment that CSXT has parked on the Spur since August, 2019.

ANSWER:

11. Identify all reasons why the track connecting the Spur to CSXT's main line (identified as the "Connecting Track" in the Petition) could not be used for parking the on-track maintenance of way equipment that CSXT has parked on the Spur at various times from August, 2019 to present, and all Documents, including Communications, .

ANSWER:

12. Identify all reasons why CSXT has parked a single piece of on-track maintenance of way equipment (the "Tamper") on the Spur since on or about February 12, 2020; all reasons why the Tamper could not have been parked on any other track on the CSX rail system during that time frame; the dates and locations that the Tamper has been used by CSX from February 12, 2020 to present; the last date and location prior to February 12, 2020 that the Tamper was used for maintenance of way functions; and all Documents, including Communications, relating to the placement or presence of the Tamper on the Spur.

ANSWER:

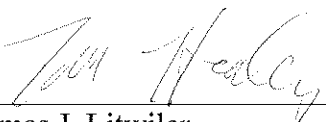
13. For any response by CSXT to any Request for Admission propounded by Atlas which is anything other than an unqualified and complete admission, set forth any and all facts which support such response and/or denial of the Request for Admission.

ANSWER:

14. Identify any and all Documents, including Communications, supporting CSXT's response to any of the above Interrogatories and, for each such Document, including Communications, set forth the date of the Document, including Communications, the author of the Document, including Communications, list all recipients of the Document, including Communications, and set forth the substance of the Document, including Communications, including the contents of any subject or "re:" line.

ANSWER:

Respectfully submitted,

By: 
Thomas J. Litwiler
Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

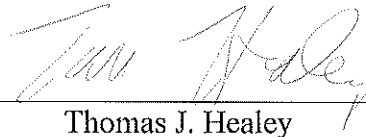
**ATTORNEYS FOR ATLAS LAND AND
BUILDING CORPORATION and ATLAS
MATERIALS RECYCLING CORPORATION**

Dated: February 26, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2020, the foregoing **First Set of Interrogatories to Respondent CSX Transportation, Inc.** was served by electronic mail and U.S. first-class mail, postage prepaid, upon the following:

Kim R. Bongiovanni, Esq.
Assistant General Counsel
CSX Transportation, Inc.
500 Water Street, J-150
Jacksonville, FL 32202-4423



Thomas J. Healey

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36380

ATLAS LAND AND BUILDING CORPORATION AND
ATLAS MATERIALS RECYCLING CORPORATION
– PETITION FOR DECLARATORY ORDER –
INDUSTRY SPUR TRACK IN PITTSBURGH, PA

**FIRST SET OF REQUESTS FOR ADMISSION
TO RESPONDENT CSX TRANSPORTATION, INC.**

Thomas J. Litwiler
Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR ATLAS LAND AND
BUILDING CORPORATION and ATLAS
MATERIALS RECYCLING CORPORATION**

Dated: February 26, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36380

ATLAS LAND AND BUILDING CORPORATION AND
ATLAS MATERIALS RECYCLING CORPORATION
– PETITION FOR DECLARATORY ORDER –
INDUSTRY SPUR TRACK IN PITTSBURGH, PA

**FIRST SET OF REQUESTS FOR ADMISSION
TO RESPONDENT CSX TRANSPORTATION, INC.**

Pursuant to 49 C.F.R. § 1114.27 and the following Definitions and Instructions, Petitioners Atlas Land and Building Corporation (“Atlas Land”) and Atlas Materials Recycling Corporation f/k/a Atlas Waste Paper Corporation (“Atlas Materials,” and collectively with Atlas Land, “Atlas” or “Petitioners”) hereby request that Respondent CSX Transportation, Inc. (“CSXT”) respond to the below First Set of Requests for Admission.

DEFINITIONS AND INSTRUCTIONS

1. “Atlas Land” shall mean Petitioner Atlas Land and Building Corporation and any of its respective agents, legal representatives, attorneys, directors, officers or employees.
2. “Atlas Materials” shall mean Petitioner Atlas Materials Recycling Corporation f/k/a Atlas Waste Paper Corporation and any of its respective agents, legal representatives, attorneys, directors, officers or employees.
3. “Atlas” shall mean Atlas Land and Atlas Materials.
4. “CSXT” shall mean Respondent CSX Transportation, Inc. and any of its respective agents, legal representatives, attorneys, directors, officers or employees.

5. “Petition” shall mean the Petition for Declaratory Order filed by Atlas in the above-captioned proceeding on February 11, 2020.

6. The “Atlas Property” shall mean parcel numbers 12-G-164-0-1, 12-G-165, 12-G-170, 12-G-178, 12-G-168 and 12-G-155 located in Allegheny County, Pennsylvania upon which Atlas’ now-vacant warehouse is situated.

7. The “Spur” shall mean the 400’ segment of railroad track identified in the Petition.

8. “Greystar” shall mean Greystar GP II, LLC.

9. The “Easement Deed” shall mean the Easement Deed dated September 11, 1992 between Pittsburgh and Lake Erie Railroad Company, as grantor, and Three Rivers Railway Company, as grantee, pursuant to which Pittsburgh and Lake Erie Railroad Company granted an easement to Three Rivers Railway Company over the land owned by Atlas Land. The Easement Deed is attached to the Petition as Exhibit D.

10. “Relating” (or forms thereof) shall mean pertaining, constituting, reflecting, evidencing, representing, supporting, contradicting, referring, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating or relevant.

11. The singular shall be deemed to include the plural and vice versa. The feminine shall be deemed to include the masculine and vice versa. The word “and” shall be deemed to include the disjunctive “or” and vice versa “any” shall also mean “all” and vice versa.

12. “Person” means any individual or any cognizable entity including, without limitation, corporations, proprietorships, partnerships, joint ventures, consortiums, clubs, associations, unions, foundations, government agencies or instrumentalities, societies or any other group.

13. These Requests shall be deemed continuing in nature to the extent provided by the Surface Transportation Board's regulations.

REQUESTS FOR ADMISSION

1. Admit that CSXT is the successor-in-interest via merger to Three Rivers Railway Company under the Easement Deed.

2. Admit that Atlas Land owns Parcels 12-G-164-0-1, 12-G-165, 12-G-170, and 12-G-178 located in Allegheny County, Pennsylvania.

3. Admit that Atlas Materials owns Parcels 12-G-168 and 12-G-155 located in Allegheny County, Pennsylvania.

4. Admit that CSXT, as the successor-in-interest via merger to Three Rivers Railway Company, became a party to the Easement Deed.

5. Admit that CSXT became a party, by successorship, to the easement set forth in Paragraph (B) of the Easement Deed.

6. Admit that the easement set forth in Paragraph (B) of the Easement Deed is terminated.

7. Admit that the Spur was governed by the Easement Deed.

8. Admit that CSXT's use of the Spur was governed by the Easement Deed.

9. Admit that CSXT discontinued its use of the Spur between November 1, 2017 and August 31, 2019.

10. Admit that, as of June 11, 2019, CSXT was aware of the existence of the executed purchase agreement between Greystar, on the one hand, and Petitioners, on the other hand, for the sale of the Atlas Property to Greystar for purposes of constructing a residential housing complex.

11. Admit that, as of August 29, 2019, CSXT was aware of the existence of the executed purchase agreement between Greystar, on the one hand, and Petitioners, on the other hand, for the sale of the Atlas Property to Greystar for purposes of constructing a residential housing complex.

12. Admit that Atlas notified CSXT that Atlas intends to sell the Atlas Property for purposes of constructing a residential housing complex.

13. Admit that CSXT received the June 6, 2019 Notice of Termination of Private Side Track Agreement and Notice of Partial Release of Easement Deed signed by Lafe Metz and the enclosures thereto, including a Partial Release of Easement Agreement.

14. Admit that CSXT, despite receiving the June 6, 2019 Notice of Termination of Private Side Track Agreement and Notice of Partial Release of Easement Deed signed by Lafe Metz and the enclosures thereto, including a Partial Release of Easement Agreement, refused to sign the Partial Release of Easement Agreement.

15. Admit that CSXT did not use the Spur in November of 2017.

16. Admit that CSXT did not use the Spur in December of 2017.

17. Admit that CSXT did not use the Spur in January of 2018.

18. Admit that CSXT did not use the Spur in February of 2018.

19. Admit that CSXT did not use the Spur in March of 2018.

20. Admit that CSXT did not use the Spur in April of 2018.

21. Admit that CSXT did not use the Spur in May of 2018.

22. Admit that CSXT did not use the Spur in June of 2018.

23. Admit that CSXT did not use the Spur in July of 2018.

24. Admit that CSXT did not use the Spur in August of 2018.

25. Admit that CSXT did not use the Spur in September of 2018.
26. Admit that CSXT did not use the Spur in October of 2018.
27. Admit that CSXT did not use the Spur in November of 2018.
28. Admit that CSXT did not use the Spur in December of 2018.
29. Admit that CSXT did not use the Spur in January of 2019.
30. Admit that CSXT did not use the Spur in February of 2019.
31. Admit that CSXT did not use the Spur in March of 2019.
32. Admit that CSXT did not use the Spur in April of 2019.
33. Admit that CSXT did not use the Spur in May of 2019.
34. Admit that CSXT did not use the Spur in June of 2019.
35. Admit that CSXT did not use the Spur in July of 2019.
36. Admit that CSXT did not use the Spur in August of 2019.
37. Admit that, prior to September of 2019, CSXT never placed or stored any railcars on the Spur except for the sole purpose of providing rail servicing to Atlas Materials' now-former recycling business and/or for purposes of maintaining the Spur itself.
38. Admit that, before September of 2019, CSXT never placed or stored any maintenance of way materials, trucks, or other vehicles on the Atlas Property or Spur except as may have been used to maintain or service the Spur.
39. Admit that, before September of 2019, CSXT never used the Spur for any purpose other than servicing the Atlas Property.
40. Admit that by way of the June 6, 2019 correspondence and enclosures sent by Atlas' counsel to CSXT, Atlas notified CSXT of the termination of the easement granted by Atlas in the Easement Deed and requested CSXT to acknowledge the termination.

41. Admit that CSXT refused and has continued to refuse to acknowledge the termination of the easement granted by Atlas in the Easement Deed.

42. Admit that in August 2019, representatives of Atlas and Greystar met with representatives of CSXT at CSXT's headquarters in Jacksonville, Florida.

43. Admit that at the meeting in August 2019 among the representatives of Atlas, Greystar, and CSXT at CSXT's headquarters in Jacksonville, Florida, CSXT was advised by Atlas that Atlas had no further need for freight rail service on the Spur.

44. Admit that at the meeting in August 2019 among the representatives of Atlas, Greystar, and CSXT at CSXT's headquarters in Jacksonville, Florida, CSXT was advised by Greystar that if Greystar were to buy the Atlas Property that it would have no future need for freight rail service.

45. Admit that CSXT is not aware of any current need for freight rail service at the Atlas Property.

46. Admit that CSXT is not aware of any planned future need for freight rail service at the Atlas Property.

47. Admit that CSXT does not currently have any plans to provide freight rail service on the Spur.

48. Admit that no entity has requested freight rail service on the Spur from CSXT subsequent to November 1, 2017.

49. Admit that CSXT is unaware of any entity currently seeking freight rail service on the Spur.

50. Admit that CSXT is unaware of any entity that has indicated to CSXT that it will seek freight rail service on the Spur in the future.

51. Admit that CSX's Demmler Yard has sufficient track capacity to park all of the maintenance of way equipment that CSXT has parked on the Spur subsequent to August 1, 2019.

52. Admit that CSXT's Demmler Yard has sufficient available storage capacity to store all of the railroad ties and others maintenance of way material or equipment that CSXT has placed on the Atlas Property subsequent to August 1, 2019.

Respectfully submitted,

By: _____

Thomas J. Litwiler

Thomas J. Healey

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

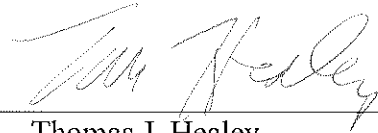
**ATTORNEYS FOR ATLAS LAND AND
BUILDING CORPORATION and ATLAS
MATERIALS RECYCLING CORPORATION**

Dated: February 26, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2020, the foregoing **First Set of Requests for Admission to Respondent CSX Transportation, Inc.** was served by electronic mail and U.S. first-class mail, postage prepaid, upon the following:

Kim R. Bongiovanni, Esq.
Assistant General Counsel
CSX Transportation, Inc.
500 Water Street, J-150
Jacksonville, FL 32202-4423

A handwritten signature in cursive script, appearing to read "Tom Healey", is written over a horizontal line.

Thomas J. Healey

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36380

ATLAS LAND AND BUILDING CORPORATION AND
ATLAS MATERIALS RECYCLING CORPORATION
– PETITION FOR DECLARATORY ORDER –
INDUSTRY SPUR TRACK IN PITTSBURGH, PA

**FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
TO RESPONDENT CSX TRANSPORTATION, INC.**

Thomas J. Litwiler
Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

**ATTORNEYS FOR ATLAS LAND AND
BUILDING CORPORATION and ATLAS
MATERIALS RECYCLING CORPORATION**

Dated: February 26, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36380

ATLAS LAND AND BUILDING CORPORATION AND
ATLAS MATERIALS RECYCLING CORPORATION
– PETITION FOR DECLARATORY ORDER –
INDUSTRY SPUR TRACK IN PITTSBURGH, PA

**FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
TO RESPONDENT CSX TRANSPORTATION, INC.**

Pursuant to 49 C.F.R. § 1114.30 and the following Definitions and Instructions, Petitioners Atlas Land and Building Corporation (“Atlas Land”) and Atlas Materials Recycling Corporation f/k/a Atlas Waste Paper Corporation (“Atlas Materials,” and collectively with Atlas Land, “Atlas” or “Petitioners”), hereby request that Respondent CSX Transportation, Inc. (“CSXT”) respond to the below First Set of Requests for Production of Documents, under oath and in writing, and produce the documents responsive to the below Requests at the offices of Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

DEFINITIONS AND INSTRUCTIONS

1. “Atlas Land” shall mean Petitioner Atlas Land and Building Corporation and any of its respective agents, legal representatives, attorneys, directors, officers or employees.
2. “Atlas Materials” shall mean Petitioner Atlas Materials Recycling Corporation f/k/a Atlas Waste Paper Corporation and any of its respective agents, legal representatives, attorneys, directors, officers or employees.
3. “Atlas” shall mean Atlas Land and Atlas Materials.

4. “CSXT” shall mean Respondent CSX Transportation, Inc. and any of its respective agents, legal representatives, attorneys, directors, officers or employees.

5. “Petition” shall mean the Petition for Declaratory Order filed by Atlas in the above-captioned proceeding on February 11, 2020.

6. The “Atlas Property” shall mean parcel numbers 12-G-164-0-1, 12-G-165, 12-G-170, 12-G-178, 12-G-168 and 12-G-155 located in Allegheny County, Pennsylvania upon which Atlas’ now-vacant warehouse is situated.

7. The “Spur” shall mean the 400’ segment of railroad track identified in the Petition.

8. “Greystar” shall mean Greystar GP II, LLC.

9. The “Easement Deed” shall mean the Easement Deed dated September 11, 1992 between Pittsburgh and Lake Erie Railroad Company, as grantor, and Three Rivers Railway Company, as grantee, pursuant to which Pittsburgh and Lake Erie Railroad Company granted an easement to Three Rivers Railway Company over the land owned by Atlas Land. The Easement Deed is attached to the Petition as Exhibit D.

10. The “Atlas Rail Access Operating Easement” shall mean the easement set forth in Paragraph (B) of the Easement Deed. The Atlas Rail Access Operating Easement is described on page 4 of the Petition.

11. “Document” or “documents” shall mean any written, typed, printed, filmed, recorded or graphic matter, however produced, reproduced or stored, of any type of description, including, without limitation, all originals and non-identical copies of the following items, in the actual or constructive possession, custody or control of CSXT or any of its agents, parents companies, subsidiaries, affiliates, representatives, accountants, or attorneys. “Documents” include agreements, books, records, letters, electronic communications, e-mails (in any form), accounts,

notes, summaries, diaries, desk calendars, work sheets, reports, communications, including intra-company communications, correspondence, cablegrams, radiograms, telegrams, telexes, faxes, memoranda, facebook messages/posts, summaries, text messages, voicemails, notes and records of telephone conversations, meetings and conferences, notes and records of personal conversations or interviews, price lists, ledgers, invoices, purchase orders, change orders, contracts, notices, drafts of any documents, marginal or other comments or notes appearing on any documents, business records, maps, charts, plans, drawings, blueprints, specifications, schedules, computer printouts, computer database(s), computer tapes, receipts, computer discs, microfilm, video recordings, tapes or other voice recordings and transcriptions thereof and data compilations from which information can be obtained or translated.

12. “Communication” (or forms thereof) shall mean any transmission of information, the information transmitted, and any process by which information is transmitted and shall include written communications, oral communications and digital and electronic communications.

13. “Relating” (or forms thereof) shall mean pertaining, constituting, reflecting, evidencing, representing, supporting, contradicting, referring, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating or relevant.

14. The singular shall be deemed to include the plural and vice versa. The feminine shall be deemed to include the masculine and vice versa. The word “and” shall be deemed to include the disjunctive “or” and vice versa “any” shall also mean “all” and vice versa.

15. In the event any responsive documents existed at some time but no longer exist or were in the possession or control of CSXT at some time but no longer are in CSXT’s possession or control, state: (i) their current custodian and whereabouts; (ii) when CSXT last had possession or control of such documents and the date and location of such most recent possession and control; and

(iii) the individual or entity to whom possession or control of such documents was provided by CSXT and the date, location and reason for the providing of such possession or control.

16. In the event any responsive document is not produced due to any claim of privilege or other protection against disclosure, state: (i) the date, author and recipients of such document; (ii) the subject matter and circumstances of generation of such document sufficient to enable the Court to determine whether the assertion of the alleged privilege or protection against disclosure is warranted under the circumstances; and (iii) the legal privilege or protection against disclosure being relied upon in withholding production.

17. "Identify" when used in reference to a person, business, entity or firm, means to state the full name of such person, business or entity and the person's address, telephone number and current employment affiliation or the entity or firm's address and telephone number of its principal place of business.

18. "Identify" when used in reference to a Document and/or Communication means to identify the date of the Document and/or Communication, the author of the Document and/Communications, the recipient(s) of the Document and/or Communication and, where applicable, the Bates number already assigned to said Document and/or Communication by CSXT or Atlas.

19. "Person" means any individual or any cognizable entity including, without limitation, corporations, proprietorships, partnerships, joint ventures, consortiums, clubs, associations, unions, foundations, government agencies or instrumentalities, societies or any other group.

20. These Requests shall be deemed continuing in nature to the extent provided by the Surface Transportation Board's regulations.

21. Unless otherwise stated in the Request, each Request shall be limited to the time period from and including January 1, 1992 to present.

REQUESTS FOR PRODUCTION

1. All Documents, including Communications, which refer to and/or relate to the Spur.

RESPONSE:

2. All Documents, including Communications, which refer to and/or relate to CSXT's use of the Spur.

RESPONSE:

3. All Documents, including Communications, which refer to and/or relate to the maintenance of the Spur.

RESPONSE:

4. All Documents, including Communications, which refer to and/or relate to the Atlas Rail Access Operating Easement.

RESPONSE:

5. All Documents, including Communications, which refer to and/or relate to the Atlas Property.

RESPONSE:

6. All Documents, including Communications, which refer to and/or relate to Atlas.

RESPONSE:

7. All Documents, including Communications, which refer to and/or relate to Kim Rice Bongiovanni's statement in her June 11, 2019 email to Lafe Metz that "[t]he September 11, 1992 Easement Deed from P&LE to The Three Rivers Railway Company ('TRRC'), also a CSXT predecessor, (the 'Easement'), continues to be used for freight rail purposes, the purpose of the original Easement grant; as such, the Easement, including the Rail Access Operating Easement area, shall remain in full force and effect."

RESPONSE:

8. All Documents, including Communications, which refer to and/or relate to the meeting among Atlas, CSXT, and Greystar which occurred on or about August 28, 2019.

RESPONSE:

9. All Documents, including Communications, which refer to and/or relate to the purpose of the Atlas Rail Access Operating Easement.

RESPONSE:

10. All Communications between CSXT and any third party relating to freight rail service on the Spur.

RESPONSE:

11. All Communications between or among CSXT agents and/or CSXT employees relating to freight rail service on the Spur.

RESPONSE:

12. All Communications between CSXT and any third party relating to use of the Spur for any purpose other than freight rail service.

RESPONSE:

13. All Communications between or among CSXT agents and/or CSXT employees relating to use of the Spur for any purpose other than freight rail service.

RESPONSE:

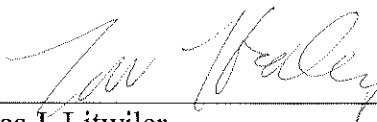
14. All Documents, including Communications, which support, refute, refer and/or relate to any answer by CSXT to any Interrogatory in Atlas' First Set of Interrogatories.

RESPONSE:

15. All Documents, including Communications, which support, refute, refer and/or relate to any response by CSXT to any Request for Admission within Atlas' First Set of Requests for Admission directed to CSXT which is anything other than an unqualified admission.

RESPONSE:

Respectfully submitted,

By: 

Thomas J. Litwiler

Thomas J. Healey

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

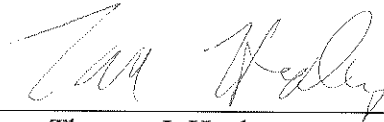
**ATTORNEYS FOR ATLAS LAND AND
BUILDING CORPORATION and ATLAS
MATERIALS RECYCLING CORPORATION**

Dated: February 26, 2020

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Kim R. Bongiovanni, Esq.
Assistant General Counsel
CSX Transportation, Inc.
500 Water Street, J-150
Jacksonville, FL 32202-4423

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Thomas J. Healey