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July 1, 2021

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VIA E-FILING

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

ENTERED
Office of Proceedings
July 1, 2021
Part of
Public Record

Re: AB 1312X
SMS Rail Lines of New York, LLC—Discontinuance Exemption—in Albany County, N.Y.

Dear Ms. Brown:

In its decision in CSX/PAS,¹ the Board noted that “SMS has stated that it ‘is discontinuing its common carrier local service and common carrier overhead trackage rights over the Line. However, SMS will continue to utilize overhead operating rights over the Line for the sole purpose of interchanging with NSR.’ (SMS Notice 3 n.4, AB 1312X.)” CSX/PAS at 14. The Board also noted that because SMS² would be discontinuing service over the line—including its overhead trackage rights—it was “unclear what traffic there would be for it [SMS] to continue interchanging with NSR.” Id. The Board requested SMS to clarify this statement. As the attorney of record for Norfolk Southern Railway Company (“NSR”), acting on behalf of SMS, I am responding to the Board’s request for clarification.

SMS currently exclusively serves and operates in the Northeast Industrial Park—also known as the Guilderland Center. SMS operates in the Northeast Industrial Park as a common

¹ CSX Corporation and CSX Transportation, Inc.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company, FD 36472, Decision No. 3 (STB served May 26, 2021) (“CSX/PAS”).

² SMS Rail Lines of New York, LLC (“SMS”).

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carrier.³ All SMS rail traffic originates or terminates in the Northeast Industrial Park. The Northeast Industrial Park connects to the approximately 15 miles of rail line owned by NSR between milepost 11.00 in Voorheesville, NY and a point 50 feet south of the centerline of the bridge at milepost 26.14 (or engineering station 6136+/-) in Delanson, NY, including the use of wye track and any track leading to the Northeast Industrial Park at milepost 12.1 and 12.29, in Albany County, NY (the “Line”). SMS leases the Line and is a common carrier over the Line pursuant to Board authority.⁴ There are no shippers located on the Line. SMS uses the Line solely to interchange traffic that originates and terminates in the Northeast Industrial Park with NSR. NSR and SMS interchange at Delanson Siding, which is the most convenient location for interchange.

Pursuant to the notice of exemption filed in this docket, SMS seeks to discontinue its common carrier rights over the Line. This will allow NS and SMS to terminate the lease in accordance with its terms, which will allow NSR to restore operations over the Line in order to interchange with CSXT at Voorheesville.⁵ However, SMS operations on the Line will not change following consummation of the requested discontinuance authority and restoration of NSR’s rights to operate over the Line to interchange with CSX. Because SMS will continue to operate as a common carrier in the Northeast Industrial Park, SMS will need to continue to interchange traffic that originates and terminates in the Northeast Industrial Park with NSR. Accordingly, SMS will continue to operate over the Line to interchange Northeast Industrial Park traffic with NSR at Delanson Siding, but SMS’s operations will be for interchange purposes only. SMS does not need common carrier authority to conduct such operations because no STB authority is required for one carrier to operate over another carrier’s tracks for interchange purposes only. Indiana Rail Road Company – Exemption – Acquisition and Operations, FD 30789, 1987 ICC LEXIS 370 (April 7, 1987), affirmed sub nom. Black v. ICC, 837 F.2d 1175 (D.C. Cir. 1988) (operation by one carrier on another carrier’s track solely for interchange did not require ICC authorization).

³ SMS Rail Lines of New York, LLC — Acquisition and Operation Exemption — Northeast Industrial Park, Inc., FD 34928 (STB served Sept. 2, 2006).

⁴ See SMS Rail Lines of New York, LLC—Lease and Operation Exemption—Delaware and Hudson Railway Company, Inc. Line in Albany County, NY, FD 35083 (STB served October 5, 2007).

⁵ SMS’s lease of the Line provided SMS with the exclusive right to operate over the Line. Termination of the lease and of SMS’s common carrier obligation is necessary for NSR to restore common carrier operations over the Line and to interchange with CSX.

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I believe this responds to the Board's request. If the Board needs additional information or clarification, please contact me.

Respectfully submitted,

/s/ William A. Mullins

William A. Mullins

cc: Parties of Record