



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

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

Re: *Commonwealth of Virginia—Acquisition Exemption—Certain Assets of CSX Transportation, Inc.*; FD 36544

Dear Ms. Brown:

In a decision served in the above-referenced proceeding on November 10, 2021, the Board directed VPRA to “clarify the contractual provision(s) addressing the circumstances under which [Virginia Passenger Rail Authority (“VPRA”)] could assume dispatching over Segment 3 and the protocols or other provisions that would govern VPRA’s dispatching of Segment 3 if it were to exercise such responsibility.” *Commonwealth of Virginia—Acquisition Exemption—Certain Assets of CSX Transportation, Inc.*, FD 36544, slip op. at 2 (STB served Nov. 10, 2021). VPRA, Buckingham Branch Railroad Company (“BBRC”), and CSX Transportation, Inc. (“CSXT”) (collectively the “Parties”) hereby represent to the Board that the agreements governing this proposed transaction were prepared with the intent that any new passenger operations by VPRA and its potential dispatching of Segment 3 would not unduly interfere with BBRC’s common carrier operations or CSXT’s limited overhead trackage rights. More importantly, as discussed below, those agreements among the Parties ensure that VPRA will not unduly interfere with common carrier freight service on Segment 3, including under circumstances where VPRA might, in the future, assume dispatching duties over that track segment.

BBRC currently operates over, maintains, and dispatches Segment 3, and it has done so since it commenced operation over it and other, connecting lines in 2004. Under the Segment 3 Operating Agreement, BBRC will continue to handle dispatching responsibilities unless and until BBRC and VPRA agree to a different dispatching arrangement. See Mot. to Dismiss 5 & n.16, Exhibit E (Segment 3 Operating Agreement § 8(b)). Thus, first and foremost, VPRA could not assume responsibility for dispatching over Segment 3 absent BBRC’s consent to the terms and conditions of such a dispatching arrangement, effectively assuring that BBRC’s common carrier obligations (and its entitlement to provide common carriage) and CSXT’s limited overhead trackage rights would not be unduly interfered with, even if dispatching duties were to change hands in the future.

In addition, potential VPRA dispatching of Segment 3 is subject to broader the provisions in the agreements between VPRA and CSXT that also govern the proposed transaction. Of these, Section 3.3 of the Joint Operating and Maintenance Agreement (“JOMA”) between VPRA and CSXT provides that “[n]othing in this Agreement shall ... alter, modify or diminish BBRC’s common carrier obligation or CSXT’s residual common carrier obligation to serve current and future freight customers

on Segment 3.”¹ In addition, under JOMA Section 6.2.1(i), “[i]ncreased passenger operations on Segment 3 shall be subject to and not unreasonably interfere with BBRC’s and CSXT’s right to satisfy any applicable common carrier obligation.” See JOMA § 6.2.1(i); see also Segment 3 Operating Agreement § 26(c), which reiterates that additional passenger rail service on Segment 3 shall not unreasonably interfere with the common carrier obligations of CSXT and BBRC. Thus, in addition to being subject to an agreement with BBRC, VPRA’s possible future assumption of dispatching duties on Segment 3 would be subject to the Parties’ commitment not to take any actions that would unduly interfere with BBRC’s common carrier obligations or CSXT’s limited overhead trackage rights.

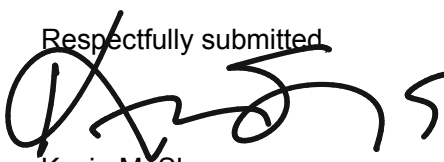
As explained above, the agreements governing the proposed transaction ensure that there would be no undue interference with common carrier freight service on Segment 3, and they reflect a consistent intent among the Parties to ensure against any such interference with BBRC’s and CSXT’s respective operations. As such, the provisions discussed above apply with equal force to all VPRA conduct on Segment 3, including if VPRA were at some future point to assume responsibility for dispatching. As the Board has noted in prior *State of Maine* cases,

If the operating agreement considered as a whole and the circumstances surrounding it are not likely to impair freight service, the passenger operator’s control over dispatching will not by itself create such an obstacle, because the latter merely implements the former. As noted above, the operating agreement does not permit freight service to be unduly impaired.

Los Angeles County Transportation Commission—Petition for Exemption—Acquisition from Union Pacific Railroad Company, FD 32374, slip op. at 3 (STB served Jul. 23, 1996). See also *Commonwealth of Virginia—Acquisition Exemption—Certain Assets of CSX Transportation, Inc.*, FD 36441, slip op. at 4 (STB served Dec. 14, 2020); *Massachusetts Department of Transportation—Acquisition Exemption—Certain Assets of CSX Transportation, Inc.*, FD 35312, slip op. at 7 (STB served May 3, 2010).

The undersigned is authorized by BBRC and CSXT to file this letter on behalf of the Parties.

Respectfully submitted,



Kevin M. Sheys
Counsel for Virginia Passenger Rail Authority

cc: Robert Wimbish, *Counsel for Buckingham Branch Railroad Company*
Louis Gitomer, *Counsel for CSX Transportation, Inc.*

¹ As stated on page 4, footnote 8 of the Motion to Dismiss, “Under the terms of the applicable trackage rights agreement, CSXT’s rights have been, and will continue to be, limited to the westbound movement of unit trains consisting of either empty open-top hopper cars or empty covered hopper cars, and to the movement of aggregate for CSXT’s own use. CSXT’s trackage rights have precluded CSXT from providing local service over the trackage rights route (of which Segment 3 is a portion) since the commencement of BBRC’s leasehold operations over the lines that include Segment 3, and those overhead service limitations will remain in place upon CSXT’s conveyance of Segment 3 to VPRA.”