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BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins

Direct Dial: (202) 663-7823
wmullins@bakerandmiller.com

January 17, 2023

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

Re: **Wisconsin Central, Ltd. – Petition for Declaratory Order – Interchange with
Soo Line Railroad Company, FD 36397**

Dear Ms. Brown:

Norfolk Southern Railway Company's ("NSR") submits this brief letter reply in support of several of the other comments filed in response to the Surface Transportation Board's ("STB" or "Board") October 19, 2022 decision soliciting input from stakeholders and other interested persons regarding the order from the Court of Appeals for the Seventh Circuit in Wis. Cent. Ltd. v. Surface Transportation Board, 20 F.4th 292 (7th Cir. 2021) ("Wis. Cent." or "Decision"). NSR limited its opening statement to the broader policy implications and this letter is likewise limited. NSR takes no position on the specific matter between Wisconsin Central, Ltd. (CN) and Soo Line Railroad Company (CP).

The unanimity of the comments deserves to be highlighted.

- No commenters advocated for major changes to how disputes over interchange agreements are handled.¹
- No commenters argued that the Decision mandated sweeping changes in the Board's precedent, procedures, or authority.

¹ In fact, the strongest suggestion offered is that parties be required to privately negotiate then mediate before raising an issue with the Board. See Comments by American Short Line and Regional Railroad Association (ASLRRRA), at 4 & 7.

- All commenters were unanimous on the fundamental point that interchange agreements are primarily negotiated and that the Board is (and should be) involved in those limited circumstances where the parties cannot reach agreement.²
- The comments were nearly unanimous on the warning that the Board should not overthink the Wis. Cent. Decision and that the Decision does not have the significant impact the Board's October 19 decision implies.³
- The comments were nearly unanimous that the Wis. Cent. Decision does not change the Board's longstanding precedent, procedures, or authority to determine the reasonableness of an interchange and that additional costs associated with changes in interchange points should be part of that reasonableness analysis.⁴

The unanimity of the comments submitted, and the absolute lack of contrary opinions speaks volumes. The comment period was open for a month and open to any party. Of the myriad possible voices, only major railroads, the short line association, and a customer alliance submitted comments. Even within the small but disparate group, the comments were all essentially the same. And NSR joins the other comments on these salient points: That interchange agreements are primarily negotiated and should remain that way. That nothing in the Wis. Cent. Decision mandates sweeping changes to the Board's procedures, precedent, or authority, particularly with respect to "reasonableness." That reasonableness remains a fact intensive inquiry that may include costs and cost-shifting if needed. That the Board must be careful about what it proposes and avoid unintentional consequences of any changes.

² For example, BNSF, ASLRRA, and CP discuss how the reciprocal nature of interchange agreements acts as a natural incentive for parties to find reasonable agreeable solutions. See, e.g., BNSF Comments, at 1-2; ASLRRA Comments, at 4 & 7; CP Comments at 3-4, 6-7, 12-13. While CN comments mostly on the specifics of the underlying case, it too cites that it is the "settled and undisputed principle" to work out agreements where possible. Id. at 12.

³ The Freight Rail Customer Alliance did not disagree with the statement nor comment on the broader policy questions. Their comments were limited, in effect, to factors to be considered under "reasonableness" of an interchange. The other comments, however, were unanimous in their opinion that the reach of the Seventh Circuit was limited. See, e.g., BNSF Comments, at 2-3; CN Comments, passim; CP Comments, passim; ASLRRA Comments, 4 (centering comments on idea any interpretation of the Decision should continue the normal policy objective encouraging private negotiation and solutions.).

⁴ See, e.g., CP Comments, passim; BNSF Comments, at 2 -3 (stating that the Decision does not disturb the Board's framework; and, that the Board retains the statutory ability to determine reasonableness in a fact-specific inquiry, including costs associated with the changed interchange location.).

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If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com. If I am unavailable, you may contact Erin Glavich, by telephone at (202) 663-7830 or by e-mail at eglavich@bakerandmiller.com.

Sincerely,

/s/ *William A. Mullins*

William A. Mullins

Enclosure

cc: Parties of Record
Thomas E. Zoeller

CERTIFICATE OF SERVICE

I hereby certify that a true copy of Norfolk Southern Railway Company's ("NSR") Reply Letter in the above-captioned proceeding was served by first-class mail, postage prepaid, or by a more expeditious manner, this 17th Day of January, on all Parties of Record.

/s/ **William A. Mullins**

William A. Mullins

Attorney for Norfolk Southern Railway Company