

Before the  
SURFACE TRANSPORTATION BOARD  
Washington, D.C. 20423

ENTERED  
Office of Proceedings  
April 10, 2023  
Part of  
Public Record

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STB Docket No. AB-55 (Sub-No. 794X)

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CSX TRANSPORTATION INC.— ABANDONMENT EXEMPTION  
IN PINELLAS COUNTY, FL

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**MOTION TO STRIKE OR, IN THE ALTERNATIVE,  
MOTION FOR LEAVE TO SUBMIT FURTHER DOCUMENTATION**

The City of St. Petersburg, FL (“City”), by and through the undersigned counsel, files this motion concerning the Response to Comments, dated March 28, 2023, from CSX Transportation, Inc. (“CSX”), and Georgetown and High Line Railway Company, LLC, (the “Reply to the Replies”). The City’s instant motion seeks to strike the Reply to the Replies or, in the alternative, leave to submit further documentation in response to the Reply to the Replies. In support thereof, the City states as follows:

In response to the Board’s January 27, 2023, order, CSX initially replied on February 27, 2023, arguing that the Surface Transportation Board (“STB” or the “Board”) made the correct decision regarding the NITU and that the Trails Act was properly evoked by CSX. Three responses were filed with the STB on or about March 8, 2023: from the City of St. Petersburg, Florida (“City”), from the United States Department of Justice, Environment and Natural Resources Division (“DOJ”), and from the Rails to Trails Conservancy (“RTC”). RTC argued the STB should reconsider said NITU decision and that the Trails Act was not properly evoked, with the City also noting the Trails Act was not properly evoked and requesting discovery to better inform the Board. DOJ merely clarified Board authority and clarified factual statements.

All parties implicitly recognized that these were the core issues to respond to based on the Board's order and responded accordingly.

49 CFR 1104.13(c) is clear and unambiguous: "[a] reply to a reply is not permitted." But on March 28, 2023, CSX did just that by filing its Reply to the Replies. In that document, CSX acknowledges the rule being violated, but argues that it should be permitted to respond when new requests for relief are set forth. The only potential "new request for relief" readily identifiable in the replies is the City's request for discovery. But CSX spends only one paragraph – one-half of one page out of fifteen total pages – addressing that "new request". The City respectfully disagrees with the legal argument made by CSX in the Reply to the Replies, that this is not a new request for relief, and discovery remains an option pursuant to 49 CFR §1114.2, *et al.*, based on the implied reopening of the matter by the Board. Notwithstanding as much, CSX appears to be using the City's request as a vehicle to reargue the same core points it already argued with its initial reply. This is plainly improper and opens the door for continued violations by CSX.

In the Reply to the Replies, CSX further argues that it should be allowed to complete the record. In this circumstance, such request is also problematic. To give a directly on-point example demonstrating the danger, section II of the Reply to the Replies casts blame on the City by quoting a single number out of a prior offer by the City in an attempt to disparage the City's efforts to start a dialogue with CSX for the purpose of establishing a trail<sup>1</sup>. The City would relish the opportunity to respond to the Reply to the Replies to *actually* complete the record by providing full documents related to this issue– including the lawsuit complaint, overtures to CSX by the City, presentations to City Council, the City's plans for a trail, and emails supporting the

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<sup>1</sup> Upon being served the Reply to the Replies, the City contacted counsel for CSX and informed them that the offer was a public record, prompting the updated version.

same. The City strongly believes that review of the full, unedited documents would demonstrate a much different perspective than what CSX attempts to convey in its Reply to the Replies. Specifically, those documents would show (i) that the City actively sought to spend significant funds and facilitate potential third-party deals that would have highly compensated CSX and (ii) that CSX was aware of the City's intention to do so. A request by the City to submit such documentation would be wholly consistent with federal court's Rule of Completeness and would be a prime example of what "compiling a complete record" *actually* is, as opposed to the misleading, cherry-picked facts included in the Reply to the Replies.

Accordingly, the City respectfully requests the entire Reply to the Replies be struck from the record, or in the alternative, that all portions of the Reply to the Replies be struck except for Section III (the first paragraph on page 13), which directly addresses the City's request for further discovery.

As an alternative request, in the event the Board allows the Reply to the Replies to remain on the record, the City respectfully requests leave to submit the documents referenced by CSX in the Reply to the Replies and further referenced herein in their entirety, with explanatory comment from the City.

Respectfully submitted this 10<sup>th</sup> day of April, 2023.

OFFICE OF THE CITY ATTORNEY  
FOR THE CITY OF ST. PETERSBURG

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail service or U.S. Postal Service, first class, to all parties in the instant action.