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VIA E-Filing

Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

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Public Record

Re: Norfolk S. Corp. & Norfolk S. Ry. Co. – Acquisition of Control – Norfolk & Portsmouth Belt Line Rr. Co., FD 36836 (Sub-No. 1)

**Response to CSXT’s Reply to NS’s Motion to Summarily Reject
CSXT’s Responsive Application for Terminal Trackage Rights**

Dear Chief of Case Administration,

Norfolk Southern (“NS”) respectfully submits this brief response in support of its Motion to Summarily Reject the CSXT Responsive Application for Terminal Trackage Rights. NS understand that Board rules do not permit “replies to replies.” However, in this particular instance, NS finds it necessary to provide greater context and clarity with respect to a number of decisions cited by the CSXT in its reply (CSXT-32).¹ As discussed herein, CSXT’s reliance on

¹ To the extent that this document is considered to be a “reply to a reply,” good cause more than exists to admit it into the record. *Colorado Landowners – Adverse Abandonment – Great Western Railway of Colorado, LLC in Weld County, Colo*, AB 857 (Sub-No. 2), slip op. at 4 (STB served July 30, 2025), *Sanimax USA LLC v. Union Pac. R.R. Co.*, NOR 42171, slip op. at 3, n.6 (STB served Nov. 3, 2023) (accepting a reply to a reply in the interest of compiling a full record); and *Flats Industrial Inc. d/b/a Flats Industrial Railroad Company – Abandonment Exemption – in Cleveland, Ohio*, AB 1327X, slip op. at 2, n.6 (STB served July 18, 2023) (same). Cf. *Sunflower State Industrial Ry., LLC – Petition for Declaratory Order*, FD 36714 (Sub-No. 1), slip op. at 2, n.3 (STB served March 28, 2025) (declining to accept a reply to a reply because it did “not provide clarity on the issues”).

the four cited cases for support for its failure to present adequate operating, environmental, and financial information is deliberately misleading.

CSXT attempts to defend its inadequate responsive application for terminal trackage rights found in CSXT-32 by citing to four examples of terminal trackage rights applications, two from the UP/SP merger,² one from the CSX merger involving the acquisition of and over the Chessie system,³ and one from the DM&E.⁴ Its reliance on these precedents purportedly supports CSXT's contention that its application is complete. When those cases are understood in context, they clearly do not support CSXT's argument.

1. Tex Mex Terminal Trackage Rights: CSXT relies on the Tex Mex application for terminal trackage rights over tracks of the Houston Belt & Terminal Railway in the UP/SP merger docket. CSXT-32, at 9. The terminal trackage rights application was filed as part of a larger endeavor, subsumed within sub-dockets Nos. 13 and 14 in that proceeding. Tex Mex acknowledged the need to file detailed information supporting its responsive application, and filed a request for, and received STB consent for, a waiver of certain, but not all, requirements for operational, marketing, and environmental information.⁵ UP/SP Decision No. 14, at *13-14. It agreed, as part of its application, to submit applications for its construction of the connections that would be required for use of the rights. UP/SP Decision No. 44 at *273, n.43. However, the STB admonished Tex Mex to "file an operating plan, marketing analyses, and other information with its responsive application...." UP/SP Decision No. 14, at *13-14. Tex Mex representatives consulted with HB&T and developed and submitted an operating plan that was considered feasible without substantial interference with HB&T and its owning carriers' traffic.⁶ While the

² CSXT cites the BNSF/Primary Applicants' Application and the Tex Mex application in the *Union Pac. Corp. – Control & Merger – S. Pac. Rail Corp.*, STB Finance Docket No. 32760 proceeding. The STB approved the merger in *Union Pac. Corp. – S. Pac. Rail Corp.*, 1 STB 233, 1996 STB LEXIS 220 (STB served August 12, 1996) ("UP/SP Decision No. 44").

³ CSXT cites the N&W terminal trackage rights application wherein CSX was granted the right to control the Chessie system, approved by the ICC in *CSX/Chessie. CSX Corp. – Control – Chessie Sys., Inc.*, 363 I.C.C. 521 (1980) ("CSX/Chessie").

⁴ CSXT cites the DM&E application wherein DM&E sought terminal trackage rights over UP trackage in conjunction with DM&E's proposed control over the Iowa, Chicago & Eastern Railroad Corporation, decided in *Dakota, Minn. & E. R.R. Corp.—Control—Iowa, Chi. & E. R.R. Corp.*, FD 34178 (STB served Sept. 26, 2002) ("DM&E/IC&E").

⁵ Tex Mex's terminal trackage rights operations were considered in the environmental overview of the UP/SP merger. *Union Pac. Corp. – S. Pac. Rail Corp.*, 1996 STB LEXIS 991 ("UP/SP Environmental Overview, Volume I") (STB served April 12, 1996), at *77-78.

⁶ "Application for Terminal Trackage Rights," *The Teas Mexican Ry. Co. – Terminal Trackage Rights over the Lines of The Houston Belt & Terminal Ry. Co.*, FD 32760 (Sub-No. 14), submitted March 29, 1996, at 5.

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STB ultimately granted Tex Mex the requested terminal trackage rights, it did so noting that, unlike in the present case, the terminal trackage rights application was unopposed and therefore “an extended discussion with respect thereto is therefore unnecessary.” UP/SP Decision No. 44 at *425, n.184.

2. BNSF Application for Terminal Trackage Rights in the UP/SP Merger: The BNSF application for terminal trackage rights in the UP/SP merger proceeding, as alluded to by CSXT, was sponsored *both* by the primary applicants and BNSF⁷ and was submitted by UP. CSXT-32, at 24. It was supported by a verified statement by the Assistant to the Executive Vice President-Operations for Southern Pacific Rail Corporation, and not by a BNSF official. CSXT-32, at 25. That verified statement was executed on November 15, 1995, before UP submitted its primary application. CSXT-32, at 33.⁸ As a request by Union Pacific, the primary applicants took into account in their operating plan, marketing plan, and environmental review of the primary application the proposed terminal trackage rights. *Id.* at *447.⁹ The UP/BNSF application nevertheless discussed specifics on how operations are performed, what railroad controls what segments and how that control is exercised, and how many trains are operated over the terminal facilities sought to be used by BNSF. CSXT-22, at 26-27. Such similar information cannot be ascertained in CSXT’s terminal trackage rights application in this case.

3. N&W Terminal Trackage Rights: This particular matter involved a terminal trackage rights application filed in a docket separate from the Chessie proceeding; however, similar to this proceeding, it was considered “inextricably tied to the issues” in the Chessie merger proceeding, and so was consolidated with the merger proceeding. 363 ICC 521, *533. Conrail opposed the rights requested on the basis that the trackage was not “terminal” trackage as required by the statute and the proposed operations were not fully set out. The ICC rejected that argument and further decided that the operations were discussed in sufficient detail in the Final Environmental Impact Statement so to permit the Board to find that there would be no significant adverse consequences and in fact “would constitute a positive environmental impact.” *Id.* at *584. Here, CSXT presented no environmental information. As to operating impacts, the Conrail line to be used was not used by Conrail for the through movement of traffic, and there was evidence

⁷ UP/SP Decision No. 44 at *256, UP/SP Decision No. 44 at *256.

⁸The primary UP/SP application was filed November 30, 1995. *Id.* at *241. It was submitted as part of UP and SP’s primary application and the primary application accounted for all operating aspects of the terminal trackage rights application, unlike CSXT’s terminal trackage rights application in this proceeding.

⁹ See, CSXT-32, at 22-23. See also, *id.* at 28-29 (noting the specific numbers of SP daily locals and switch moves to be eliminated through the proposed merged UP/SP operations and noting that “[a]ccording to UP/SP’s projections, the added BN/Santa Fe trains should not even use all of the capacity that is being freed up by the UP/SP operating changes”). See also, UP/SP *Environmental Overview, Volume I* at *36 (discussing BN/Santa Fe operations within terminals and yards).

submitted showing that Conrail used the line sparingly. Id. There was also information presented showing the estimated cost for the rehabilitation of the relevant track and the fact that N&W would bear the cost of that rehabilitation of the line. Id. at *585. This is in stark contrast to CSXT's failure to present any operating detail, environmental impacts, or rehabilitation costs (yet alone who would pay for those costs) for the restoration of the connecting track and double diamond.

4. DM&E: CSXT's reliance on the application for terminal trackage rights filed by Dakota, Minnesota & Eastern (DM&E) over a segment of track owned by UP is similarly misleading and not comparable to CSXT's request here. In that case, DM&E sought the terminal trackage rights of an island of UP-owned track, physically separated from the rest of the UP system, and as such totally unused by UP for the 15 years prior to the terminal trackage rights application. CSXT-32, at 40. There was no need for operating information because "...such operations will not and cannot have any effect on UP's ability to operate its own trains, since UP does not conduct any operations over the Owatonna trackage, has not utilized the trackage for over fifteen years, and cannot even access that trackage from the rest of the UP system. Given that DM&E currently conducts dispatching and all maintenance on the Owatonna trackage, Wessler V.S. at 3, it is doubtful that DM&E's terminal trackage rights operations will even be perceptible to UP." CSXT-32, at 45W. That case too stands in stark contrast to CSXT's terminal trackage rights request in this proceeding, which involves three carriers operating over the same track.

CSXT's reliance on the four cited cases is fundamentally misplaced. None of the authorities it invokes support the sweeping interpretation CSXT advances, nor do they justify the extraordinary relief it seeks. To the contrary, those decisions underscore principles that directly contradict CSXT's position. CSXT's selective and distorted reading of precedent is an attempt to mislead the Board and obscure the true legal framework governing terminal trackage rights. The Board should reject CSXT's arguments and deny its application to preserve the integrity of its precedent and the fairness of the regulatory process.¹⁰

¹⁰ It should be noted that as recently as the proceeding in FD 32760 (Sub-No. 46) involving the Lake Charles terminal where BNSF, represented by the same counsel as CSXT in this proceeding, presented a substantial amount of information related to the public interest test and the practicality of its operations to support its request for terminal trackage rights application in that proceeding. CSXT has presented none of that type of information in this proceeding.

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Respectfully Submitted,

/s/ William A. Mullins

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cc: Parties of Record