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William A. Mullins

April 18, 2019

VIA E-FILING

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

Re: FD 36223
Norfolk Southern Railway Company – Petition To Set Trackage
Rights Compensation – Norfolk & Portsmouth Belt Line Railroad
Company

Dear Ms. Brown:

In a decision served March 29, 2019 (“Decision”), the Surface Transportation Board (“STB” or “Board”) instituted a proceeding to set the trackage rights compensation for the trackage rights that Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”) currently operates over approximately 11 miles of railroad line located in Norfolk, Va. and Chesapeake, Va. and owned by Norfolk Southern Railway Company’s (“NSR”). The Board did not set a specific procedural schedule. Rather, it requested the parties (NPBL, NSR, and CSX Transportation, Inc. (“CSXT”)) to confer and to submit, either jointly or separately, a “non-bifurcated” procedural schedule, involving one round of discovery and one round of pleading that includes opening evidence, replies, and rebuttals.” Decision at 6 (emphasis in original). The parties conferred on April 15. Unfortunately, the parties could not reach consensus. NSR hereby submits its proposed procedural schedule.

NSR initially proposed a period of 60 days for discovery and then 45 days for evidence preparation and filing of opening comments by all three parties. There would then be a period for replies and then rebuttals, filed by all three parties at the same time. After consultation with the parties and reviewing the Board’s order, it appears that all parties want the flexibility to take discovery on all four methodologies for setting the interest rental component under the SSW

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methodology.¹ NSR also understands that it possesses much of the information that would be used in any SSW compensation approach. Accordingly, in order to provide the parties with sufficient time to undertake discovery on any of the SSW methodologies,² analyze the material, and present opening comments and evidence, NSR proposes the following schedule:

- D – 0 Date of Board order setting out procedural schedule and beginning of discovery period
- D + 120 – Discovery period ends³
- D + 165 – Opening comments and evidence due for all parties
- D + 210 – Replies due
- D + 255 – Rebuttals due

NSR does not see any need for briefs, which would simply add additional time to the schedule with little benefit. Indeed, the Board did not see the need for briefs in the New England Central Railroad, Inc. - Trackage Rights Order- Pan Am Southern LLC, FD 35842 (STB served Oct. 31, 2017) proceeding nor did the Board's Decision contemplate the filing of briefs.⁴ The above schedule reflects CSXT's and NPBL's desire to have more time for discovery.

Sincerely,



William A. Mullins

cc: Parties of Record

¹ The four methodologies for setting trackage rights compensation were set forth in St. Louis Southwestern Ry. Co. - Trackage Rights Over Missouri Pacific Railroad Company – Kansas City to St. Louis, 1 I.C.C. 2d 776, 1984 ICC LEXIS 347 (1984) (“SSW I”) and St. Louis Southwestern Ry. Co. – Trackage Rights Over Missouri Pacific Railroad Company – Kansas City to St. Louis Trackage Rights Compensation, 4 I.C.C. 2d 668, 1987 ICC LEXIS 15 (1987) (“SSW II”) (collectively, “SSW” or “SSW Compensation”). The four approved methodologies are: (1) the capitalized earnings approach; (2) replacement cost new less depreciation; (3) the comparable line segments approach; and (4) the stand alone cost method.

² As the Decision indicates, the parties are to “limit discovery to and present evidence on matters related to the calculation methods recognized in SSW Compensation only.” Decision No. 6 (emphasis added).

³ This is twice the amount of time that NSR originally proposed for the discovery period.

⁴ Decision at 6 (asking the parties to propose schedules that involve one round of discovery and one round of pleadings that includes opening evidence, replies, and rebuttals. No briefs were contemplated).