

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

THOMAS J. LITWILER
(312) 252-1508
tlitwiler@fletcher-sippel.com

April 18, 2019

247533

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
April 18, 2019
Part of
Public Record

Re: **Docket No. FD 36223**
Norfolk Southern Railway Company -- Petition to
Set Trackage Rights Compensation -- Norfolk and
Portsmouth Belt Line Railroad Company

Dear Ms. Brown:

Pursuant to the Board's decision served on March 29, 2019 in the above-captioned proceeding, respondent Norfolk and Portsmouth Belt Line Railroad Company ("NPBL") hereby offers the following comments regarding a potential procedural schedule for the development and submission of evidence and argument in this trackage rights compensation matter.

Counsel for petitioner Norfolk Southern Railway Company ("NS"), intervenor CSX Transportation, Inc. ("CSXT") and NPBL have conferred regarding a proposed procedural schedule. CSXT has forthrightly indicated that the procedural schedule it will submit today will be accompanied by another, as-yet undisclosed pleading, and that prospect made it difficult for the parties to reach consensus on a joint procedural schedule. Based on the situation as currently understood, NPBL supports the longer schedule that CSXT is expected to advocate, rather than the more abbreviated schedule that NS has previously sought.

In particular, given the non-bifurcated approach that the Board has directed and the potential need to address multiple methodologies under the *SSW Compensation* framework, a 150-day discovery period and a short period after evidence is submitted for the filing of a single round of briefs would be appropriate. In the discussions between the parties, CSXT indicated that it has patterned its schedule after 49 C.F.R. § 1111.9(a), governing stand-alone cost rate cases; NPBL notes that an essentially similar procedural schedule is prescribed for Simplified-SAC methodology cases as well. *See* 49 C.F.R. § 1111.10(a)(1)(i). While NPBL would not

FLETCHER & SIPPEL LLC

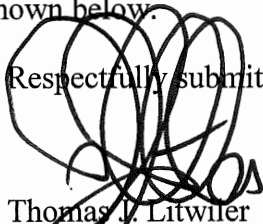
Ms. Cynthia T. Brown
April 18, 2019
Page 2

object to minor adjustments to those schedules as the Board felt warranted (a 120-day period for discovery, for example, rather than 150 days), NPBL agrees that those schedules provide a useful template for the instant proceeding.

The Board's March 29th decision reasonably contemplates the simultaneous filing of opening, reply and rebuttal evidence by the parties. Given the fairly unique posture of this proceeding, NPBL is aware that a full opening evidentiary filing by NPBL may be needlessly duplicative of the opening filings of the other parties. Presuming it may do so without waiving its right to make appropriate reply and rebuttal filings and submit a closing brief, NPBL would reserve the option to omit a full opening filing. NPBL understands that this course, if followed, would effectively preclude NPBL from proposing on reply a different *methodology* than either NS or CSXT may advocate, but would not constrain NPBL from addressing in reply and rebuttal and on brief relevant evidence on the methodology or methodologies that NS and CSXT proffer. If NS, CSXT or the Board believe that NPBL must make a full opening evidentiary filing in order to participate in the latter stages of the proceeding, NPBL requests that be made clear now.

I certify that a copy of this letter has been served by electronic or first-class mail on counsel of record in this proceeding, as shown below.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Norfolk and Portsmouth
Belt Line Railroad Company

TJL:tl

cc: Louis E. Gitomer, Esq.
Anthony J. LaRocca, Esq.
Steven C. Armbrust, Esq.
William A. Mullins, Esq.
Garrett D. Urban, Esq.
James L. Chapman, IV, Esq.