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August 16, 2019

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

**RE: Docket No. AB-565 (Sub-No. 17X), New York Central Lines, LLC –
Abandonment Exemption – in Dutchess County, NY**

Dear Ms. Brown:

CSX Transportation, Inc. (“CSXT”) is efilng its response in opposition to the document filed by National Association of Reversionary Property Owners.

Please contact me if you have any questions.

Sincerely yours,

Louis E. Gitomer

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-565 (Sub-No. 17X)

NEW YORK CENTRAL LINES, LLC-ABANDONMENT EXEMPTION-IN DUTCHESS
COUNTY, N.Y.

REPLY TO NATIONAL ASSOCIATION OF REVERSIONARY PROPERTY OWNERS

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Dated: August 16, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-565 (Sub-No. 17X)

NEW YORK CENTRAL LINES, LLC-ABANDONMENT EXEMPTION-IN DUTCHESS
COUNTY, N.Y.

REPLY TO NATIONAL ASSOCIATION OF REVERSIONARY PROPERTY OWNERS

CSX Transportation, Inc. (“CSXT”), as successor by merger to New York Central Lines, LLC (“NYC”)¹, files this Reply to the document submitted by the National Association of Reversionary Property Owners (“NARPO”).

CSXT opposes the request by NARPO to deny the trail use request filed on July 30, 2019 by Dutchess County, NY (“Dutchess County”), seeking the issuance of a Notice of Interim Trail Use or Abandonment (the “NITU”). On July 30, 2019, CSXT filed a response to Dutchess County agreeing to negotiate trail use under the NITU. NARPO has not demonstrated that Dutchess County and CSXT have failed to comply with the requirements of 49 C.F.R. §1152.29 for the issuance of a NITU. Indeed, CSXT and Dutchess County have met the trail use requirements.

In order to convert a railroad line into a trail under 16 U.S.C. §1247(d), the following must occur: (1) an abandonment must be sought by the railroad and granted by the Board; (2) a potential trail user must file a request for trail use, including a Statement of Willingness to

¹ *CSX Corp.-Control & Operating Leases/Agreements-Conrail Inc.*, Docket No. FD 33388 (Sub-No. 94) (served November 3, 2003) (authorizing the consolidation of NYC within CSXT).

Assume Financial Responsibility (“SWAFR”) as required by 49 C.F.R. §1152.29(a)(3)²; (3) the railroad must agree to negotiate trail use; (4) the Board must issue a NITU under 49 C.F.R. §1152.29(d)(1); (5) the railroad and potential trail user must enter an agreement providing that the interim trail use is subject to future restoration of rail service pursuant to 49 C.F.R. §1152.29(d)(2); and (6) the parties must notify the Board that a trail use agreement has been reached under 49 C.F.R. §1152.29(h).

Abandonment of the Trail Line was sought, granted, and has not been consummated. A Petition for Exemption was filed to abandon and discontinue service an approximately 4.7-mile line of railroad between milepost QCO 0.0 and milepost QCO 74.08 and between milepost QCK 29.7 and milepost QCK 31.0 in the City and Town of Poughkeepsie, Dutchess County, NY (the “Line”) and was granted.³ In addition to granting abandonment and discontinuance of service exemptions and issuing a NITU⁴, at pages 6-7 the Surface Transportation Board (the “Board”) imposed the several conditions.

In granting a late-filed NITU in this proceeding⁵ the Board stated:

Trail use requests may be accepted as long as the Board retains jurisdiction over the ROW and the carrier is willing to enter into negotiations. That is the case here. Although many consultation conditions typically are not regulatory barriers to consummation, the NYDS Coastal Management condition, which requires consultation with the New York Department of State, Coastal Management Program, may affect land or water uses within a coastal zone (49 U.S.C. § 1105.9), and thus is a barrier to consummation in this case. *See Puget Sound & Pac. R.R.—Aban. Exemption—in Grays Harbor Cnty, Wash.*, AB 1023 (Sub-No. 1X), slip op. at 4 (STB served Sept. 13, 2011). Because CSXT has not yet complied with that condition, the abandonment authority remains in effect and

² Where a late-filed trail use statement is accepted, the abandonment has not been consummated, and the railroad is willing to negotiate, an appropriate NITU will be issued. 49 C.F.R. §1152.29(e)(1).

³ *New York and Eastern Railway, LLC-Discontinuance Exemption-in Dutchess County, NY*, Docket No. AB-873X (served October 15, 2004). NYE and CSXT were granted an exemption to discontinue service over the Line and NYC was granted an exemption to abandon the Line

⁴ *Id.*

⁵ *New York Central Lines, LLC-Abandonment Exemption-in Dutchess County, N.Y.*, Docket No. AB-565 (Sub-No. 17X), slip op. at 2-3 (served January 23, 2012).

cannot yet be consummated, and the Board retains jurisdiction over the line. And, as noted above, CSXT has agreed to negotiate with GHL regarding the 3.2-mile segment.

Dutchess County filed a SWAFR on July 30, 2019, requesting the Board to issue a NITU for an approximately 2.72-mile portion of the Line between milepost QCO 0.48 and milepost QCO 2.1±, and milepost QCO 2.0± and milepost QC 74.08 (formerly milepost QCO 3.2) in the city and town of Poughkeepsie, Dutchess County, NY (the “Trail Line”) solely on the east side of the Hudson River.

CSXT, as successor to NYC, agreed to negotiate interim trail use for the Trail Line with Dutchess County on July 30, 2019.

Once these three steps were taken, CSXT and Dutchess County expected the Board to issue a NITU.⁶ A document (which does not comply with the most basic filing requirements of the Board’s regulations) was submitted by NARPO alleging that the Trail Line does not connect to the national rail system and therefore the Board cannot issue a NITU. CSXT is responding to explain that NARPO is wrong, in the event the Board accepts the NARPO document for filing.

NARPO is seeking to confuse the issues with its description of the Trail Line. As has been clear since the abandonment was filed, the Trail Line is located completely on the east side of the Hudson River. Therefore, the anonymous “member on the west side of the Hudson River along this abandonment” is not along the abandonment of the Line since the Line does not reach, much less cross the Hudson River. NARPO next refers to “two members on the east side of the Hudson River”, but unlike on the west side does not mention that they are “along this abandonment.” NARPO may have no members who are adjacent to the Trail Line. Regardless of

⁶ With regard to the fifth step that was previously mentioned, CSXT notifies the Board that CSXT and Dutchess County have entered an agreement for the sale of the Trail Line for interim trail use subject to future restoration of rail service. Once the NITU is issued and certain diligence issues are resolved, the transaction will close.

whether NARPO has “members” along the proposed trail, their interest does not show that CSXT and Dutchess County are not in full compliance with the trail use procedures at 49 C.F.R. §1152.29.

NARPO also questions whether the Trail Line connects to the national rail system. The Trail Line connects to the national system as can be seen on the attached map. The westernmost portion of the Trail Line at milepost QC 74.08 connects to the north-south Metro-North Commuter Railroad that CSXT operates over under trackage rights.

NARPO also complains that its members have been denied use of their rights to the property underlying the railroad line. NARPO well knows that its members who believe that they have a property interest in a part of a rail-banked right-of-way under state law could bring a takings case seeking just compensation under the Tucker Act.⁷ The failure of diligence of NARPO and its members is the cause of any harm to themselves.

Finally, NARPO states that the Board has proposed limiting the length of trail use negotiations and should therefore deny the request of Dutchess County.⁸ However, as NARPO admits, the Board has only served a proposal and has not adopted a final binding rule. Therefore, the proposed rule is not binding on the NITU requested by Dutchess County.

⁷ See *Preseault v. ICC*, 494 U.S. 1 (1990); *Jie Ao and Xin Zhou—Petition for Declaratory Order*, Docket No. FD 35539 (served June 6, 2002); and *National Trails System Act and Railroad Rights-Of-Way*, Docket No. EP 702 (served February 16, 2011).

⁸ See *Limiting Extensions of Trail Use Negotiating Periods*, Docket No. EP 740 (Sub-No. 1).

CSXT requests the Board to reject all of the arguments of NARPO as incorrect as a matter of fact and law. CSXT also respectfully requests the Board to expeditiously grant the NITU requested by Dutchess County.

Respectfully submitted,

Louis E. Gitomer

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Dated: August 16, 2019

CERTIFICATE OF SERVICE

I certify that I have this day served copies of this Reply on all parties of record in this proceeding by electronic service or first class mail, postage pre-paid.⁹

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⁹ The service list has been updated to include the names of officials at different agencies and necessary addresses.

Elizabeth Waldstein-Hart
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P. O. Box 889
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Louis E. Gitomer
Louis E. Gitomer
August 16, 2019

MAP

