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THOMAS F. MCFARLAND

October 11, 2019

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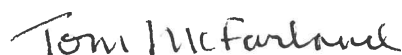
Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Docket No. NOR-42167, *Greenville & Western Railway Company, LLC v. CSX Transportation, Inc.*

Dear Ms. Brown:

Hereby forwarded for filing with the Board is a Motion for Leave to Amend the Public (Redacted) Version of a Complaint to Commence Arbitration under 49 C.F.R. § 1108.5(a) in the above referenced matter.

Very truly yours,



Thomas F. McFarland
An Attorney for Complainant

TMcF:mg:1841\efSTB5

cc: (by e-mail)
Louis E. Gitomer, Esq., *lou@lgraillaw.com*
J. Marshall Lawson, Esq., *marshall.lawson@wcrscorp.com*

BEFORE THE
SURFACE TRANSPORTATION BOARD

GREENVILLE & WESTERN RAILWAY	)	
COMPANY, LLC,	)	
	)	
<u>Complainant,</u>	)	Docket No. NOR-42167
v.	)	
	)	
CSX TRANSPORTATION, INC.,	)	
	)	
<u>Defendant.</u>	)	

MOTION FOR LEAVE TO AMEND
COMPLAINT TO COMMENCE ARBITRATION
UNDER 49 C.F.R. § 1108.5(a)

GREENVILLE & WESTERN RAILWAY
COMPANY, LLC
Historic Greer Depot
300 Randall Street, Suite A
Greer, SC 29651-3410

Complainant

J. MARSHALL LAWSON
General Counsel
Greenville & Western
Railway Company, LLC
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Attorneys for Complainant

DATE FILED: October 11, 2019

BEFORE THE
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GREENVILLE & WESTERN RAILWAY	)	
COMPANY, LLC,	)	
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<u>Complainant,</u>	)	Docket No. NOR-42167
v.	)	
	)	
CSX TRANSPORTATION, INC.,	)	
	)	
<u>Defendant.</u>	)	

**MOTION FOR LEAVE TO AMEND
COMPLAINT TO COMMENCE ARBITRATION
UNDER 49 C.F.R. PART 1108.5(a)**

Pursuant to 49 C.F.R. § 1117.1, GREENVILLE & WESTERN RAILWAY COMPANY, LLC (GRLW) hereby respectfully requests leave to amend the Complaint to Commence Arbitration under 49 C.F.R. § 1108.5(a) that it filed on September 30, 2019. The proposed amendment is solely to add a request for access by means of haulage to its existing request for access by means of trackage rights. Section XVI (d) of the Complaint arguably already contains such a request, viz.:

The requested trackage rights are sought as an alternative to haulage . . .

Nevertheless, in the interest of clarity, the Complaint should be amended to leave no doubt that GRLW seeks haulage as well as trackage rights.

Defendant CSX Transportation, Inc. (CSXT) has not yet been required to file its Answer to the Complaint. CSXT will not be procedurally harmed because it appears that CSX will have a full 20 days to file its Answer to the Amended Complaint, measured from the filing date of the

Amended Complaint. Counsel for CSXT has stated that CSXT does not oppose the relief sought in this Motion.

The amendments sought by means of this Motion are set forth below. A proposed Amended Complaint is attached to this Motion.

SPECIFIC AMENDMENTS

1. Section XIII, line 1 - add “haulage or” before “trackage rights”.
2. Section XIV, line 1 - add “haulage or” before “trackage rights”.
3. Section XIV(a), line 5 - add “haulage or” before “trackage rights”.
4. Section XIV(b), line 6 - add “haulage or” before “trackage rights”.
5. Section XIV(c), line 1 - add “haulage or” before “trackage rights”.
6. Section XV, line 1 - add “for or” before “by GRLW”.
7. Section XVI, line 1 - add “haulage or” before “trackage rights”.
8. Section XVI(a), line 2 - add “haulage or” before “trackage rights”.
9. Section XVI(c), line 4 - add “haulage or” before “trackage rights”.
10. Section XVI(c), line 6 - add “haulage or” before “trackage rights”.
11. Section XVI(d), line 4 - add “haulage or” before “trackage rights”.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons states, leave should be granted to amend the Complaint as requested.

Respectfully submitted,

GREENVILLE & WESTERN RAILWAY
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Complainant

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v.	)	
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CSX TRANSPORTATION, INC.,	)	
	)	
<i>Defendant.</i>	)	

AMENDED COMPLAINT TO COMMENCE ARBITRATION
UNDER 49 C.F.R. § 1108.5(a)

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COMPANY, LLC
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COMPANY, LLC,	)	
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<u>Complainant,</u>	)	Docket No. NOR-42167
v.	)	
	)	
CSX TRANSPORTATION, INC.,	)	
	)	
<u>Defendant.</u>	)	

**AMENDED COMPLAINT TO COMMENCE ARBITRATION
UNDER 49 C.F.R. PART 1108.5(a)**

Pursuant to 49 C.F.R. § 1108.5(a), GREENVILLE & WESTERN RAILWAY COMPANY, LLC (GRLW), hereby submits this Amended Complaint to Commence Arbitration (Complaint) to resolve a dispute between it and CSX TRANSPORTATION, INC. (CSXT) that is governed by the Railroad Industry Agreement, as amended (RIA).^{1/}

PARTICIPATION IN THE BOARD'S ARBITRATION PROGRAM

GRLW and CSXT are participants in the Board's arbitration program under 49 C.F.R. § 1108.3(a) by virtue of their participation in the RIA. Section VI of the RIA provides:

The participating Large and Small Railroads agree that if they have a dispute arising under Sections (IV)(3) - "Paper Barriers and New Routes"... of this Agreement that cannot be resolved through discussion and negotiation between the parties involved, the parties will submit any unresolved issues to arbitration under the auspices of the STB (Ex. Parte No. 560). Such arbitration will be based on the policies and principles of those sections of this Agreement,

^{1/} The RIA contains principles and policies designed to resolve specified disputes between Large and Small Railroads.

and to the extent applicable, the associated examples and exhibits, and will be binding on the parties.

Reference to Ex Parte No. 560 in the quotation above is to *Arbitration of Disputes Subject to Stat. Juris. of the STB*, 2 STB 564 (1997). The arbitration regulations have been amended and updated in *Assessment of Mediation and Arbitration Procedures*, 2012 WL 1058184 (Ex Parte No. 699, decision served March 28, 2012). This complaint for arbitration is based on the amended regulations.

REQUEST FOR SINGLE ARBITRATOR

Pursuant to 49 C.F.R. § 1108.5(a)(1), Complainant GRLW desires arbitration with a single arbitrator instead of a three-member arbitration panel.

PROTECTIVE ORDER

In order to avoid disclosure of certain confidential information relating to the business interests of the Shipper who supports the relief sought in the Complaint, GRLW has filed a Motion for a Protective Order.

COMPLAINT

Subject to the ability to submit additional supporting evidence in an “arbitration evidentiary phase” under 49 C.F.R. § 1108.7(b), GRLW complains against CSXT, as follows:

I.

GRLW is a Class III common carrier by rail subject to the jurisdiction of the Board. GRLW came into existence on October 20, 2006, by virtue of a Purchase and Sale Agreement with CSXT. Under that Agreement, GRLW acquired 12.74 miles of CSXT’s Belton Subdivision, between MP AKL 26.26 (end of track, near Honea Path, SC) and MP AKL 39.00,

near Pelzer, SC. In order to facilitate interchange, GRLW leased Pelzer Siding from CSXT between MP AKL 40.02 and MP AKL 40.53 at Pelzer, SC. GRLW is also authorized to operate over CSXT between MP AKL 39.00 and AKL 41.00 at Pelzer solely for the purpose of interchange. Attached to this Complaint as Appendix 1 is a copy of a map that illustrates GRLW's rail lines.

II.

CSXT is a Class I common carrier by rail subject to the jurisdiction of the Board. As here pertinent, CSXT interchanges with GRLW at Pelzer, SC. See Appendix 1.

III.

For all practical purposes, GRLW's sole access to the national rail system is by means of interchange with CSXT at Pelzer. There is a 12-mile rail line owned by Pickens Railway (PKHP), a Class III rail carrier, between a point of connection to GRLW at MP AKL 29.03, Belton, SC (see Appendix 1) and a point of connection to Norfolk Southern Railway Company (NS) at Anderson, SC, but that rail line does not provide adequate access to NS for multiple reasons, i.e.:

- (a) PKHP is FRA Excepted track. That limits hazardous material shipments to five cars per train, and effectively eliminates the possibility of GRLW customers from using NS routing for unit train shipments.
- (b) PKHP is 10 mph track. That limits the expediency by which PKHP can handle traffic between Belton and Anderson, SC.
- (c) PKHP is a 263,000-lb. restricted route. In contrast to GRLW,

which is a 286,000-lb. capable at all stations, PKHP is restricted to 263,000-lb. gross weight on rail, primarily due to advanced age and lighter weight of its rail.

(d) PKHP adds a third carrier to routing. That makes PKHP routes inherently more expensive.

(e) PKHP routing effectively restricts new business opportunities. In view of all of the foregoing restrictions, almost all new business opportunities are forced to move solely via GRLW-CSXT routing. That effectively precludes GRLW-PKHP-NS routing.

IV.

is considering construction of a new rail-to-truck transload facility for on GRLW's rail line at Williamston, SC. The that would move via that transloading facility is currently being transported by truck from is considering shipment of via NS to Williamston for transloading to truck for delivery to users in is considering doing so because transloading from rail to truck at Williamston would enable to have an on-hand supply of located than if the were to be transported solely by truck.

V.

Appendix 2 attached to this Complaint is a copy of a letter dated April 5, 2019 from Mr. Steven C. Hawkins, President and CEO of GRLW to several upper-management personnel of CSXT. At page 2 of that letter, Mr. Hawkins on behalf of GRLW requested

trackage rights over CSXT between MP AKL 41.0 (Pelzer, SC) and MP AKL 45.0 (Piedmont, SC) for the purpose of a direct interchange between GRLW and NS at Piedmont, SC. In support of that request, Mr. Hawkins identified the major shortcomings in PHKP's rail line that prevents use of that route to provide reasonable access to NS at Anderson, SC (Appendix 2 at 2), as identified in Section 3 on page 4 and 5 of this Complaint. Mr. Hawkins also identified multiple reasons why the proposed trackage rights would not be an unreasonable burden on CSXT's operations (viz, Appendix 2 at 2-3):

- (a) GRLW has operated over CSXT tracks between MP AKL 39.0 and MP AKL 41.0 for interchange for more than 12 years without incident or injury; and
- (b) the requested trackage rights between MP AKL 41.0 and 45.0 are an extension of existing GRLW Operating Rights over CSXT between MP AKL 39.0 and 41.0; and
- (c) GRLW carries \$25 million in general liability insurance, which is much more than the average amount in the short line industry; and
- (d) CSXT infrastructure is already in place. There is a mainline turnout in place at MP AKL 44.95 that allows direct access from NS to GRLW.
- (e) CSXT track between MP AKL 39.0 and 45.0 is FRA Class II track.
- (f) CSXT does not provide service to any shippers south of MP AKL 51.95, Whitehorse, SC (Greenville) until it interchanges with GRLW at MP AKL 41.0.
- (g) Train speed over CSXT track between MP 39.0 and MP 45.0 is 25 mph.
- (h) CSXT track is rated for 286,000-lb. shipments.
- (i) The trackage rights would not create any discernible maintenance costs for CSXT.

(j) The requested trackage rights would eliminate a third carrier, PKHP, in the routing.

(k) CSXT would still have an opportunity to quote rates over GRLW lanes.

(l) CSXT only serves GRLW three days per week via its local train. CSXT would have no scheduled operations south of MP AKL 51.95 three days per week.

(m) CSXT would be fairly compensated for use of its tracks.

VI.

Attached to this Complaint as Appendix 3 is a copy of a letter dated April 17, 2019 from Mr. Tony DiDeo, Director, Intercarrier Management, CSXT, in response to Mr. Hawkins' letter of April 5, 2019 (Appendix 2). CSXT there refused to grant the requested trackage rights. Ironically, in spite of the fully-explained and detailed GRLW justification for the requested trackage rights, Mr. DiDeo stated that "(t)here are no details in the request" (Appendix 3 at 1). Any grounds on which CSXT refused to grant the requested trackage rights are not identified in Mr. DiDeo's letter.

VII.

Attached to this Complaint as Appendix 4 is a copy of a letter dated May 10, 2019 from Mr. Hawkins of GRLW to Mr. Tom Tisa, Head of Marketing Strategic Development, CSXT, explaining the fallacies in the letter in which Mr. DiDeo of CSXT refused the requested grant of trackage rights.

VIII.

Attached to this Complaint as Appendix 5 is a copy of a letter dated May 30, 2019 from Mr. DiDeo to Mr. Hawkins again refusing to grant the requested trackage rights. That letter pointed out that GRLW's Operating Rights between Milepost Nos. 39.0 and 41.0 are restricted solely for interchange purposes.

IX.

Attached to this Complaint as Appendix 6 is a copy of a letter dated June 21, 2019 from Thomas F. McFarland, one of the attorneys for GRLW to Mr. DiDeo. That letter amended the Complaint to include trackage rights between Milepost Nos. 39.0 and 41.0. The letter also rebutted the reasons for denial of the requested trackage rights.

X.

Attached to this Complaint as Appendix 7 is a copy of a letter dated July 14, 2019 from Louis E. Gitomer, one of the attorneys for CSXT to Mr. McFarland in which Mr. Gitomer requested information and documents relating to GRLW's request for trackage rights.

XI.

Attached to this Complaint as Appendix 8 is a copy of a letter dated July 26, 2019 from Mr. McFarland to Mr. Gitomer providing the information and documents requested by Mr. Gitomer (copies of lengthy insurance policies are omitted because of their bulk and limited relevance; they are available on request).

XII.

Attached to this Complaint as Appendix 9 is a copy of a letter dated September 11, 2019 from Mr. Gitomer to Mr. McFarland in which CSXT again refused to grant the requested trackage rights.

XIII.

GRLW hereby respectfully requests that CSXT grant GRLW haulage or trackage rights over 6 miles of CSXT rail line between CSXT's point of connection to NS at MP AKL 45.0, Piedmont, SC, and CSXT's point of connection to GRLW at MP AKL 39.0, Pelzer, SC.

XIV.

The requested haulage or trackage rights should be granted because they are in accordance with the requirements of Exhibit C, Example 7 of the RIA, which provides:

Large Railroad "B" must grant Access via haulage (or trackage rights at "B's" option) between Short Line "A" and Non-short Line "C" to move New Traffic handled by "B" for distances up to fifteen (15) miles along "B's" line of railroad connecting "A" and "C" as long as there is not a Congestion Problem. . .

(a) The traffic meets the definition of "New Traffic" in Section II of the RIA because that traffic is not now moving by rail, i.e., it is being transported solely by truck from origin to destination; and does not unreasonably negatively impact CSXT because CSXT does not now transport that traffic and would not transport the traffic whether or not the requested haulage or trackage rights were to be granted; and

(b) there is no "Congestion Problem" as that term is defined in page 8 of the RIA because the New Traffic can be handled without causing unreasonable interference with CSXT's operations. The only revenue operations that CSXT has south of

Whitehorse (Greenville, SC) at MP AKL 51.95 is interchange with GRLW at Milepost AKL 41.0 three days per week. Moreover, the track segment over which GRLW seeks haulage or trackage rights (i.e., MP AKL 39.0-45.0) is utilized by CSXT to provide service to GRLW local trains during only 3.6 percent of the year. That segment sits vacant 96.4 percent of the year; and

(c) the haulage or trackage rights over CSXT requested by GRLW are for less than 15 miles of CSXT rail line (i.e., 6 miles between MP AKL 39.0 and 45.0).

XV.

The traffic to be transported for or by GRLW for is traffic to a newly-constructed customer facility on GRLW (i.e., a rail-to-truck transloading facility at Williamston, SC) by a new customer of GRLW (i.e.,). That situation meets the “not-now-moving-by-rail” element of the definition of “New Traffic” in Section III, Exhibit F(1).^{2/}

XVI.

Other provisions of the RIA provide strong support for the haulage or trackage rights sought by GRLW:

(a) One of the major areas of concern expressed by shortline railroads that led to the RIA was the lack of alternate routings (RIA at 1). The requested haulage or trackage rights would provide an efficient route (NS-GRLW) as an alternate to an inefficient route (NS-PHKP-GRLW).

^{2/} The heading of Exhibit F states that it is an Interpretation relating to Paper Barriers. The situations considered in Exhibit F relate to New Routes rather than Paper Barriers. The failure of the heading of Exhibit F to provide that Exhibit F relates to New Routes as well as Paper Barriers appears to have been an oversight. That is shown by reference to Exhibit C which applies to both Paper Barriers and New Routes.

(b) The RIA provides in Section III, page 3, under the heading “Routing Alternatives and Access”, that “A Large Railroad seller/lessor should not be able to block a Short Line’s reasonable attempts to gain New Traffic . . . for which (the Large Railroad) cannot offer a competitive package . . .” It is evident that CSXT cannot offer a competitive package via CSXT-GRLW routes because CSXT has increased rates over those routes to the point that GRLW has lost significant traffic that formerly was transported over those routes.

(c) The RIA provides in Section IV 3(a) that “if the requested . . . routing helps the connecting Short Line and does not harm the Large Railroad, then the request should be approved as it will improve shipper rail service while strengthening the rail industry”. The requested haulage or trackage rights route would help GRLW and would not harm CSXT for reasons already explained in this Complaint. Therefore, the requested haulage or trackage rights should be granted.

(d) The RIA provides in Section IV. 3(b) that (j)oint initiatives designed to increase Short Line freight business . . . include, but are not limited to . . . Large Railroad haulage of Short Line traffic.” The requested trackage rights are sought as an alternative to haulage. Without question, the requested haulage or trackage rights would increase GRLW’s freight business in accordance with this provision.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for all the reasons stated, the Board should accept this Amended Complaint for filing; direct CSXT to file an Answer to the Complaint as provided in the Board's regulations; and direct the parties to go forward with processing the Complaint as provided in the Board's regulations.

Respectfully submitted,

GREENVILLE & WESTERN RAILWAY
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Complainant

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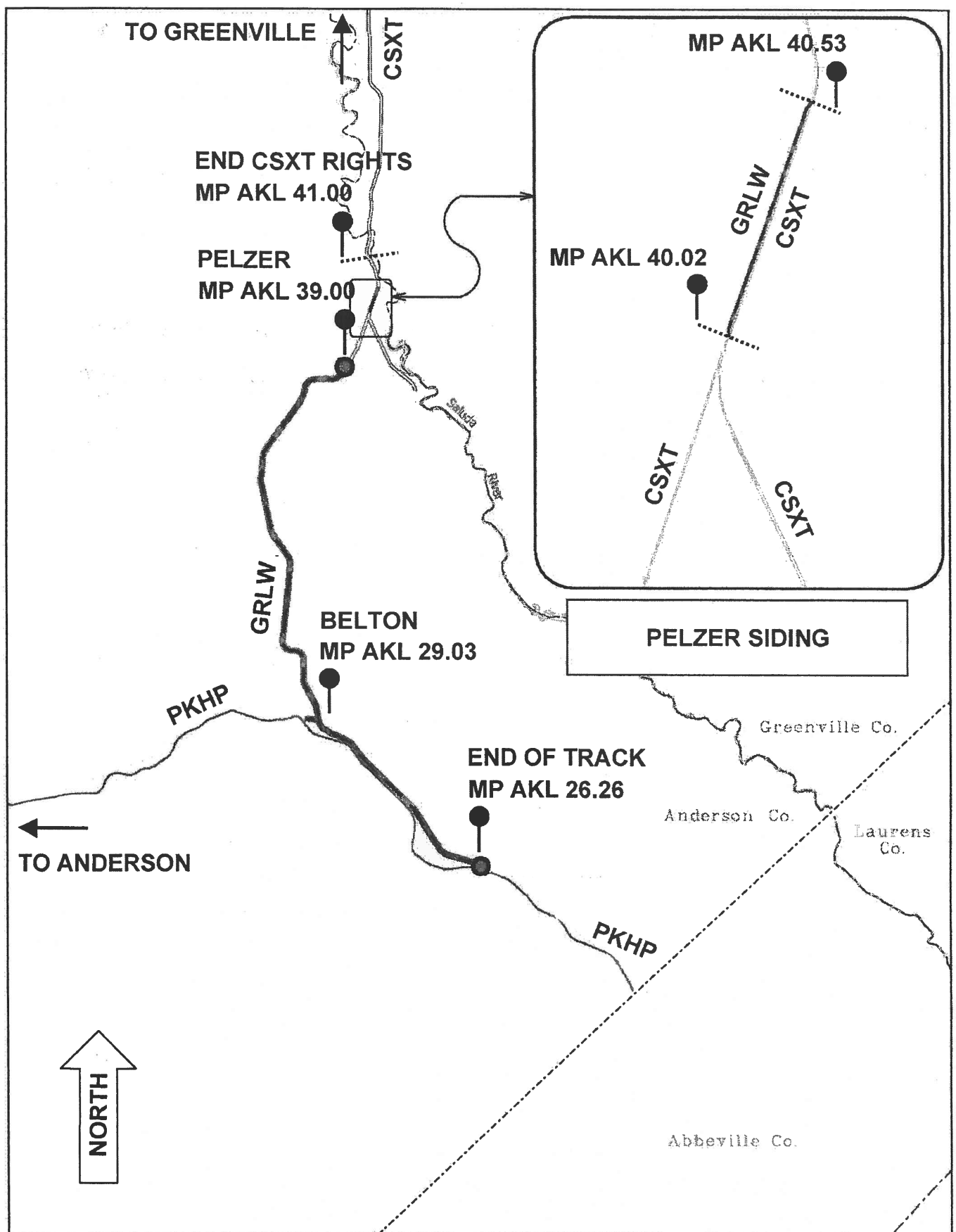
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DATE FILED: October 11, 2019

APPENDIX 1

Greenville & Western Railway Company, LLC



APPENDIX 2

Greenville & Western Railway Company, LLC

Historic Greer Depot, 300 Randall Street, Suite A, Greer, South Carolina 29651 - 3410

April 5, 2019

Edmond L. Harris,
Executive Vice President Operations
CSX Transportation
500 Water Street
Jacksonville, FL 32202-4423

Mark K. Wallace,
Executive Vice President Sales and Marketing
CSX Transportation
500 Water Street
Jacksonville, FL 32202-4423

Jason L. Young,
Senior Manager, Intercarrier Agreements & Services
CSX Transportation
500 Water Street – J801
Jacksonville, FL 32202-4423

Re: Greenville & Western Railway Request for Trackage Rights over CSX Transportation's Belton Subdivision, between MP AKL 41.00 (Pelzer, SC) and MP AKL 45.00 (Piedmont, SC)

All addressed:

Greenville & Western Railway (GRLW) came into existence on October 20, 2006, under a Purchase and Sale Agreement (PSA) between CSX Transportation (CSXT) and GRLW. Under the PSA, GRLW acquired 12.74 miles of CSXT's Belton Subdivision, between MP AKL 26.26 (End of Track, near Honea Path, SC) and MP AKL 39.00 (near Williamston, SC). To facilitate interchange under the new operation, GRLW was also leased Pelzer Siding, between MP AKL 40.02 and MP AKL 40.53 (Pelzer, SC) and granted two miles of Trackage Rights for Interchange Purposes between MP AKL 39.00 and MP AKL 41.00 (Pelzer, SC). Please refer to the enclosed GRLW map for clarification of the limits of our current operation.

At the time of the line's acquisition, there were less than 1,000 total annual carloads handled, with more than 90% of that traffic bridged between CSXT at Pelzer, SC and Pickens Railway (PKHP) at Belton, SC as an overhead move. In its first seven years, GRLW successfully grew its interline traffic with CSXT from less than 100 cars annually to nearly 8,800, with overhead to and from the PKHP growing to more than 1,000 carloads annually. While these volumes held steady through 2014, CSXT rate increases on ethanol and various other commodities and lanes since 2015, have subsequently lead to a steep decline in GRLW volumes.

During the entirety of GRLW's existence, GRLW has had access to the Norfolk Southern (NS) rail network, albeit via a 12-mile route over intermediate carrier PKHP between Belton, SC and Anderson, SC. As a matter of *technicality*, GRLW has had open access to both the CSXT and NS networks for more than

12 years, with nothing in the PSA in any way restricting GRLW from offering customers this dual access to the national rail network. However, in *practicality*, the NS connection via PKHP is, in and of itself, a traffic limiting barrier due to a variety of factors:

- ***PKHP is FRA Excepted track.*** This limits hazardous materials shipments to a maximum of five cars per train and effectively eliminates the possibility of GRLW customers utilizing NS routing for unit train movements.
- ***PKHP is 10 MPH track.*** This limits the expediency by which PKHP can handle traffic between GRLW at Belton, SC and NS at Anderson, SC.
- ***PKHP is a 263K restricted route.*** In contrast to GRLW, which is 286K capable at all stations; PKHP routing is restricted to a maximum gross weight of 263,000 lbs., primarily due to the age and lighter weight of its rail.
- ***PKHP routing adds a third carrier to the rate divisions.*** With more parties associated with the freight bill, PKHP routing is inherently more expensive.
- ***PKHP routing effectively restricts new business opportunities to CSXT.*** With all of the above restrictions on PKHP routing, almost all new business opportunities are forced to move *solely* via GRLW-CSXT routing, which does not work in every potential new customer's case.

In light of the significant aforementioned losses of existing GRLW traffic solely due to CSXT-rate increases since 2015, and the effective restrictions our current NS access via PKHP places on GRLW's ability to have an equally unconstrained alternate route to the national rail network, GRLW hereby requests Trackage Rights over CSXT's Belton Subdivision, between MP AKL 41.00 (Pelzer, SC) and MP AKL 45.00 (Piedmont, SC), for the purpose of direct GRLW-NS interchange, effective immediately. GRLW believes this request to be reasonable and further contends that the proposed Trackage Rights in no way creates an undue burden or restriction on CSXT's current operation:

- ***GRLW currently operates on CSXT Trackage Rights.*** GRLW has operated on CSXT's Belton Subdivision at Pelzer, SC, between MP AKL 39.00 and MP AKL 41.00, for more than 12 years *without incident or injury*, operating not only GRLW locomotives and equipment, but also CSXT's locomotives and equipment via a Run Through Power Agreement.
- ***GRLW requested Trackage Rights are an extension of the existing limits.*** Current limits would be extended from two (2) miles to six (6) miles under this request.
- ***GRLW carries \$25,000,000 Commercial General Liability insurance.*** Far above the short line industry average, GRLW is more than sufficiently insured to address any liability concerns that might be presented by the addition of four supplementary miles of CSXT route operation.
- ***GRLW is the only customer being served by CSXT south of MP AKL 51.95.*** The only revenue operations CSXT has south of Whitehorse, SC (Greenville) is interchange with GRLW. *Note: Duke Energy retired the (formerly CSXT rail-served) coal burning units at the W.S. Lee Steam Station in Pelzer, SC in 2014, and while the lead to the plant remains, Duke removed the tracks inside the plant at that time. The plant was subsequently converted to Natural Gas (NG) between 2015 and 2018 and has had three fully operational NG units online for more than a year. There are no other CSXT-served rail facilities south of MP AKL 51.95.*
- ***CSXT infrastructure is already in place.*** No upgrades or improvements would be necessary to CSXT infrastructure to effect the requested Trackage Rights. There is already a mainline turnout in place at MP AKL 44.95 to allow direct GRLW access to NS and NS's line is in service at this location. See enclosed aerial view of Piedmont, SC.
- ***CSXT's line is FRA Class II track.*** Like GRLW, CSXT's Belton Subdivision is already FRA Class II track, as opposed to the current PKHP alternative route to NS, which is FRA Excepted.

- **CSXT's line is 25 MPH track.** Like GRLW, CSXT's Belton Subdivision is already 25 MPH track, as opposed to the current PKHP alternative route to NS, which is restricted to 10 MPH. The total time estimated for operation over the additional four miles is less than 10 minutes each way. Even if such operation were for some reason restricted to 10 MPH, the total time estimated for operation over the additional four miles is only 24 minutes each way.
- **CSXT's line is rated for 286K.** Like GRLW, CSXT's Belton Subdivision is already rated for 286K, as opposed to the current PKHP alternative route to NS, which is restricted to 263K.
- **GRLW Trackage Rights would not create any discernible maintenance costs for CSXT.** Even with the addition of 1,000 hypothetical new carloads of business moving over CSXT to Piedmont, SC annually, that would only be an average of 4 cars per day, 5 days per week, moving over CSXT trackage between Pelzer, SC and Piedmont, SC.
- **GRLW Trackage Rights over CSXT eliminates adding a third carrier to the rate divisions.** Unlike the current PKHP alternative route to NS, direct delivery of cars to NS by GRLW would effectively reduce the rate for customers who choose NS routing.
- **CSXT would still have every opportunity to quote GRLW lanes.** Where traffic origins and destinations are exclusively CSXT, that traffic would naturally continue to move (or begin to move) via GRLW-CSXT routing. Where traffic origins and destinations permit CSXT or NS routing, CSXT would still have equal opportunity to quote those lanes (existing and new), and if that quote is competitive, keep or secure that traffic.
- **CSXT only serves GRLW three days per week with local F797.** CSXT local F797 only serves GRLW's interchange at Pelzer, SC three days per week; Sunday, Tuesday, and Thursday. CSXT has no regularly scheduled operations south of MP AKL 51.95 on Monday, Wednesday, Friday, or Saturday.
- **CSXT only serves GRLW twice per month with unit ethanol trains.** Since 2017, GRLW has only received an average of two unit trains per month, which after more than 11 years, will conclude in June 2019 as GRLW customer Lincoln Energy (Lincoln) ceases shipments to Belton, SC due to non-competitive rates via CSXT-GRLW routing. It is anticipated that as a result of Lincoln's departure, terminal owner Kinder Morgan will close its Belton, SC Terminal, curtailing the possibility of not only ethanol shipments to GRLW, but also biodiesel.

When GRLW acquired its line from CSXT in 2006, the line was classified as FRA Excepted and was barely safe for the movement of trains. GRLW has invested *millions* of dollars in its infrastructure to support predominantly CSXT-GRLW traffic... traffic that did not exist at the time of GRLW's acquisition and that has contributed in excess of \$100,000,000 to CSXT's gross revenues over the past 12 years. Today, GRLW operates the majority of its line as FRA Class II track and with an impeccable safety record to its credit, having never incurred a rule-violation derailment in more than 12 years of operation.

In light of the volume losses already sustained, and those that are immediately imminent, it has never been more critical for GRLW to be able to offer existing and potential customers competitive access to our nation's rail network. At a bare minimum, GRLW must sustain its revenues at a certain level in order to remain solvent and capable of offering its services as an unbiased interstate commerce rail carrier to both existing and potential new customers – a commitment GRLW believes to also be in CSXT's long-term interest as well.

April 5, 2019
CSX Transportation
Page 4

GRLW respectfully requests a written response to this request for Trackage Rights by May 5, 2019. In the interim, do not hesitate to contact me if you should have any questions or concerns or wish to discuss my proposal. You may reach me at:

Greenville & Western Railway Company, LLC
Steven C. Hawkins, CEO and President
Historic Greer Depot
300 Randall Street, Suite A
Greer, SC 29651-3410

864-334-5374 Office
864-479-0560 Office Direct
864-905-2974 Cell
864-479-0562 Fax
steven.hawkins@wcrscorp.com

Thank you for your valuable time and earnest consideration.

Sincerest regards,

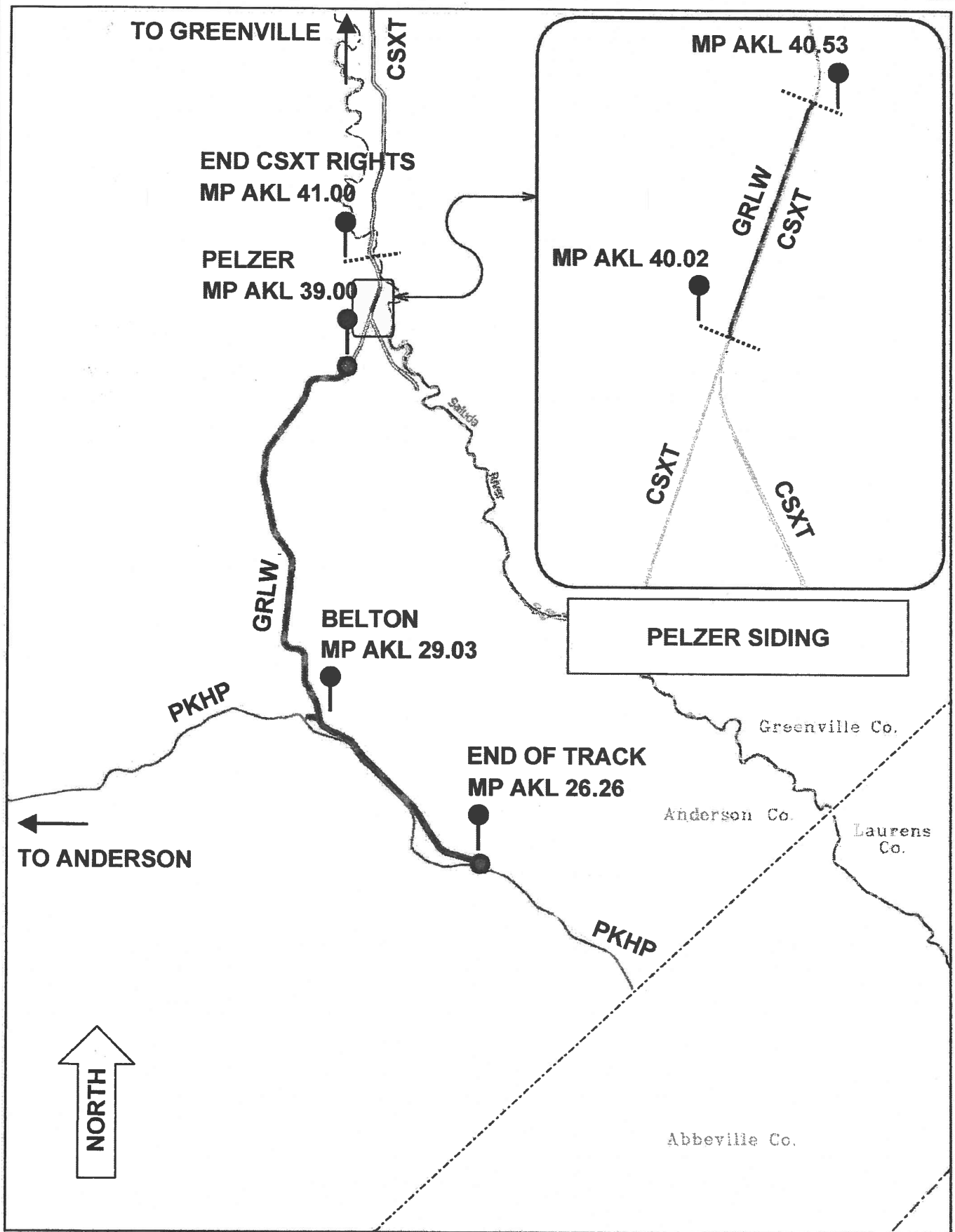


Steven C. Hawkins,
CEO and President

Cc: J. Marshall Lawson, General Counsel for GRLW
Cheryl R. Hawkins / file

Enclosures

Greenville & Western Railway Company, LLC



Piedmont, SC

CSXT

NS

Piedmont Christian Academy

MP AKL 45.00

MP AKL 44.95

MP V 131.9

North

CSXT

Google



APPENDIX 3



500 Water Street, J-801
Jacksonville, Florida 32202
Phone: 904.359.7637
E-Mail: Tony_DiDeo@csx.com

Tony DiDeo
Director Intercarrier Management

April 17, 2019

Steven C. Hawkins
CEO and President
Greenville & Western Railway Company, LLC
Historic Greer Depot
300 Randall Street, Suite A
Greer, SC 29651-3410

RE: Greenville & Western Railway (GRLW) Request for Trackage Rights over CSX Transportation's (CSXT) Belton Subdivision, between MP AKL 41.00 (Pelzer, SC) and MP AKL 45.00 (Piedmont, SC)

Dear Steven:

Thank you for your letter, dated April 5, 2019, regarding your request for trackage rights and an overview of the issues your railroad is currently facing. CSXT values our partnership with GRLW and appreciates your commitment to safety and growing rail volumes since your acquisition of the line in 2006.

Unfortunately, your proposal regarding trackage rights over CSXT is unacceptable. There are no details in the request and there is no indication that the trackage rights would provide any significant value to CSXT. Furthermore, CSXT is not in a position to resolve the issues you may have with the Pickens Railway.

Feel free to reach out if you have any further questions or concerns.

Best regards,

Tony DiDeo

Cc: Ed Harris, EVP Operations
Mark Wallace, EVP & Chief Sales and Marketing Officer
Tom Tisa, Head of Marketing Strategic Development

APPENDIX 4

Greenville & Western Railway Company, LLC

Historic Greer Depot, 300 Randall Street, Suite A, Greer, South Carolina 29651 - 3410

May 10, 2019

Via USPS Priority Mail and Email

Tom Tisa,
Head of Marketing Strategic Development
CSX Transportation
500 Water Street
Jacksonville, FL 32202-4423
tom_tisa@csx.com

Re: Greenville & Western Railway Request for Trackage Rights over CSX Transportation's Belton Subdivision, between MP AKL 41.00 (Pelzer, SC) and MP AKL 45.00 (Piedmont, SC)

Mr. Tisa:

Reference is made to Greenville & Western Railway (GRLW)'s letter of April 5, 2019 (enclosed), requesting trackage rights over four miles of CSX Transportation (CSXT) track between MP AKL 41.00 (Pelzer, SC) and MP AKL 45.00 (Piedmont, SC). In support of that request, GRLW identified a variety of major shortcomings in the Pickens Railway (PHKP)'s rail line that prevents use of that route to provide reasonable access to Norfolk Southern (NS) at Anderson, SC. We also identified multiple reasons why the proposed trackage rights would not constitute an unreasonable burden on CSXT's operations.

The request was perfunctorily denied by CSXT's Director of Intercarrier Management, Tony DiDeo, via letter dated April 17, 2019 (enclosed), on the following grounds: "(1) there are no details in the request; (2) there is no indication that the trackage rights would provide any significant value to CSXT; and (3) CSXT is not in a position to resolve the issues you may have with the Pickens Railway".

GRLW respectfully contends these grounds for rejection are without merit. First, GRLW provided abundant facts supporting its request for trackage rights, so the contention that there are "no details in the request" is baffling. Second, the correct standard for "New Traffic" under the Railroad Industry Agreement (RIA), of which both CSXT and GRLW are signatories, is the requirement that such traffic not "...unreasonably negatively impact the Large Railroad", not that it provide "significant value to [the Large Railroad] CSXT". Third, GRLW is not asking CSXT to "resolve [any] issues" it "may have with the Pickens Railway". In reality, GRLW has no issues with the owners or management of the Company. As abundantly detailed in the aforementioned letter, the problem lies with the physical constraints on competitive pricing the PKHP connection and infrastructure presents to shippers/movements. Moreover, CSXT's grant of trackage rights would resolve the issue at hand, which is the continuing loss of critical rail business for GRLW.

The RIA between Large (Class I) and Small (Class II and III) railroads was designed to benefit small railroads, including trackage/hauling rights under the New Routes Section of the Agreement. The general premise of the Agreement is that if the requested access helps the connecting short line and does not harm the large railroad, then the request should be approved. Lack of alternate routings is one of the major areas of concern expressed by shortline railroads that led to the RIA.

May 10, 2019
CSX Transportation
Page 2

According to the clear terms of the RIA, “[a] Large Railroad seller/lessor should not be able to block a Short Line’s reasonable attempts to gain New Traffic that the Large Railroad cannot handle or for which it cannot offer a competitive package”. Here, it is evident that CSXT cannot offer a competitive package via CSXT-GRLW routes because CSXT has increased rates over those routes to the point that GRLW has lost significant traffic formerly transported over those routes. In addition, two prospective shippers, for reasons of confidentiality herein referred to as Shipper A and Shipper B, have both suspended plans to construct transload facilities on GRLW because of the uncompetitive rates quoted by CSXT, which are exacerbated by the lack of direct access to NS. Under these facts, GRLW’s request for trackage rights is supported by and in conformance with the clear terms of the RIA.

Moreover, under Section IV 3(a) of the RIA, “if the requested ... routing helps the connecting Short Line and does not harm the Large Railroad, then the request should be approved as it will improve shipper rail service while strengthening the rail industry.” The requested trackage rights route would unquestionably help GRLW and would not harm CSXT for reasons already explained.

Finally, Example 7 to Exhibit C of the RIA provides:

Large Railroad “B” must grant Access via haulage (or trackage rights at “B’s” option) between Short Line “A” and Non-Short Line “C” to move New Traffic handled by “B” for distances up to fifteen (15) miles along “B’s” line of railroad connecting “A” and “C” as long as there is not a Congestion Problem. “B” is not obligated to provide equipment. Haulage (or trackage rights at “B’s” option) may be for longer distance by mutual agreement.

A diagram (prepared by GRLW and attached hereto as **Exhibit A**) applies the particular facts of this request for trackage rights to Example 7. It shows, clearly, that GRLW can satisfy each element of this particular exemplar to the Agreement.

For all the reasons stated above and stated in the initial request, GRLW respectfully requests CSXT grant the requested trackage rights as to Shipper A and Shipper B’s potential traffic. A written response to this renewed/limited request is requested by May 31, 2019. Should no affirmative response be forthcoming from CSXT by this date, it is GRLW’s intention to seek relief through binding Arbitration before the Surface Transportation Board.

Please do not hesitate to contact me should you have any questions or wish to discuss this request. You may reach me at:

Greenville & Western Railway Company, LLC
Steven C. Hawkins, CEO and President
Historic Greer Depot
300 Randall Street, Suite A
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steven.hawkins@wcrscorp.com

May 10, 2019
CSX Transportation
Page 3

Thank you for your valuable time and earnest consideration.

Sincerest regards,

A handwritten signature in blue ink, appearing to read "S. C. Hawkins", followed by a horizontal line.

Steven C. Hawkins,
CEO and President

Cc: J. Marshall Lawson, General Counsel for GRLW
Cheryl R. Hawkins / file

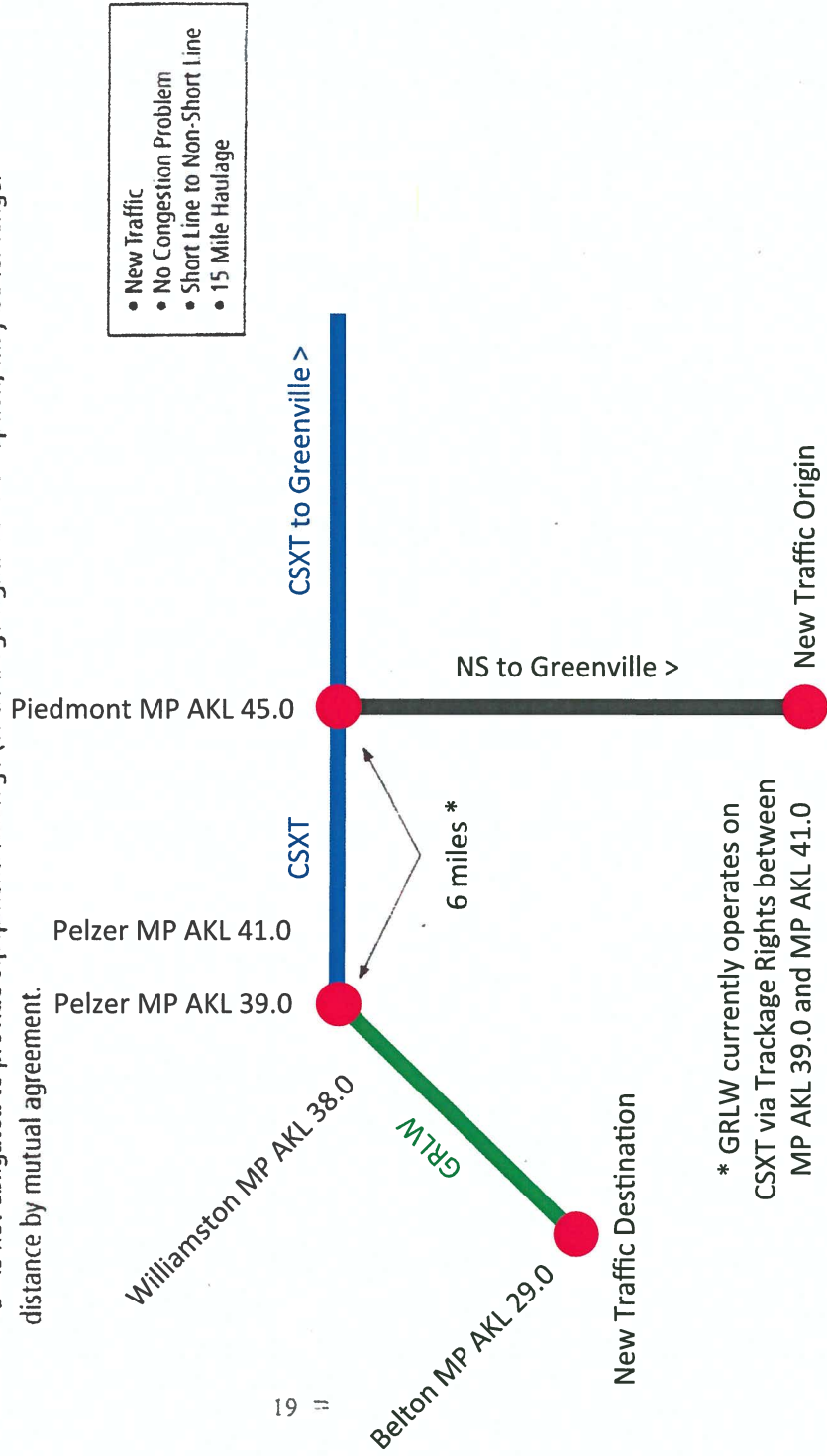
Enclosures

Exhibit A

Example 7

New Routes

Large Railroad "B" must grant Access via haulage (or trackage rights at "B's" option) between Short Line "A" and Non-Short Line "C" to move New Traffic handled by "B" for distances up to fifteen (15) miles along "B's" line of railroad connecting "A" and "C" as long as there is not a Congestion Problem. "B" is not obligated to provide equipment. Haulage (or trackage rights at "B's" option) may be for longer distance by mutual agreement.



APPENDIX 5



500 Water Street, J-801
Jacksonville, Florida 32202
Phone: 904.359.7637
E-Mail: Tony_DiDeo@csx.com

Anthony DiDeo
Director Intercarrier Management

May 30, 2019

Steven C. Hawkins
CEO and President
Greenville & Western Railway Company, LLC
Historic Greer Depot
300 Randall Street, Suite A
Greer, SC 29651-3410

RE: Greenville & Western Railway (GRLW) Request for Trackage Rights over CSX Transportation's (CSXT) Belton Subdivision, between MP AKL 41.00 (Pelzer, SC) and MP AKL 45.00 (Piedmont, SC)

Dear Mr. Hawkins:

In letters dated April 5, 2019 and May 10, 2019 (the "Letters"), the Greenville & Western Railway Company, LLC ("GRLW") has made an incomplete request for CSX Transportation, Inc. ("CSXT") to grant trackage rights over its line between milepost ("MP") AKL 41.00, at or near Pelzer, SC, and MP AKL 45.00, at or near Piedmont, SC in order for GRLW to be able to interchange traffic to the Norfolk Southern Railway Company ("NS") at Anderson, SC.

CSXT rejected the request made in the April 5 letter due to insufficient detail. In fact, the Letters mischaracterize the rights that GRLW acquired to operate over CSXT. GRLW claims that it operates under trackage rights over CSXT between MPs AKL 39.00 and AKL 41.00 (April 5 on page 2 and May 10 on Exhibit A). In the Notice of Exemption filed with the Surface Transportation Board (the "Board") on September 20, 2006 in Finance Docket No. 34926, Greenville & Western Railway Company, LLC-Acquisition and Operation Exemption-Line of CSX Transportation, Inc., GRLW sought an exemption to acquire a 12.74-mile line between near Belton, SC, MP 26.26, and Pelzer, SC, MP AKL 39.00. The Notice does not mention any trackage rights, especially those between MPs AKL 39.00 and 41.00. The Notice of Exemption served by the Board does not grant GRLW trackage rights between MPs AKL 39.00 and 41.00. Finance Docket No. 34926, *Greenville & Western Railway Company, LLC-Acquisition and Operation Exemption-Line of CSX Transportation, Inc.*, served October 20, 2006. CSXT has searched its files and the records at the Board and has not found any grant of trackage rights from CSXT to GRLW between MPs AKL 39.00 and 41.00.

According to CSXT's records, which include agreements between CSXT and GRLW, CSXT: (1) leases the "Pelzer Siding" near MP AKL 40 to GRLW solely for the purpose of interchange between CSXT and GRLW Land & Track Lease dated September 15, 2006 between CSXT and GRLW); (2) agreed to interchange traffic with GRLW on the Pelzer Siding and granted GRLW operating rights over CSXT between MPs AKL 39.00 and AKL 40.5 for the sole purpose of delivery and receipt of interchange traffic (Interchange Agreement dated October 21, 2006 between CSXT and GRLW); and (3) agreed to interchange ethanol trains and empty railcars with GRLW on CSXT's Belton Subdivision main track between MPs AKL 41.0 and AKL 39.9 and granted GRLW operating rights over CSXT between MPs AKL 39.00 and AKL 41.0 for the sole purpose of delivery and receipt of interchange traffic (Interchange Agreement dated January 15, 2009 between CSXT and GRLW).

Based on the agreements between CSXT and GRLW, CSXT did not agree to grant GRLW and the Board has not granted GRLW trackage rights over CSXT between MPs AKL 39.0 and AKL 41.0. GRLW is requesting an island operation over CSXT between MPs AKL 41.00 and AKL 45.00, which GRLW has no legal means of accessing. This is not a proper request under the RIA.

GRLW repeats its request for access between MPs AKL 41.00 and AKL 45.00 (which it cannot access) in the May 10 letter, which states that the request is being made under that portion of the Railroad Industry Agreement (the "RIA") relating to Routing Alternatives and Access in Article III – Principles of Relationship. Specifically, on page 2, the letter states: "According to the clear terms of the RIA, '[a] Large Railroad seller/lessor should not be able to block a Short Line's reasonable attempts to gain New Traffic that the Large Railroad cannot handle or for which it cannot offer a competitive package.'" This is only a partial quotation from page 3 of the RIA under Section III. Principles of Relationship, Routing Alternatives and Access, which omits the conditions precedent that GRLW has failed to mention, much less meet.

The RIA limits a Short Line's access over a Large Railroad. "The Short Line's attempt to gain New Traffic is not reasonable, however, if (1) the incremental traffic caused by the new business cannot be handled without causing unreasonable interference with the Large Railroad's operations; or (2) the Large Railroad is not adequately compensated for use of its tracks, yards and other facilities necessary to accommodate the traffic between the Short Line and another Railroad; or (3) the traffic on the Large Railroad is negatively impacted by such action." Routing Alternatives and Access in Article III – Principles of Relationship, page 2. GRLW does not mention the three factors that are required to be considered, much less provide proposals or background information for CSXT to evaluate.

As previously mentioned, GRLW has not asked for access over CSXT to reach NS. GRLW has rights to operate between MPs AKL 39.00 and AKL 41.00 for interchange with CSXT. GRLW was not granted trackage rights over this two miles of track.

GRLW has not demonstrated that the proposed traffic will be New Traffic as defined by the RIA. Under the RIA "'New Traffic' means traffic that (1) is not now moving by rail ...and (2) does not unreasonably negatively impact the Large Railroad." RIA, II. Definitions and Other Notes. GRLW is assuming that the transload traffic generated by two new facilities on GRLW is

new traffic. A determination of whether the traffic is new, under the definition, depends on whether the two shippers already move the traffic by rail and are merely relocating their transload facilities and whether any of the current traffic moves over CSXT or would negatively impact CSXT's operations. RIA, Interpretation Relating to Paper Barriers 1 (...replacements of customer facilities from which traffic is currently or had been previously moving by any mode of transportation (whether or not such existing facilities were previously located on Short Line) do not satisfy the first element of the definition of "New Traffic"...). If the traffic that GRLW proposes to move does not meet the definition of New Traffic in the RIA, then GRLW's request for trackage rights is not governed by the RIA.

Next, the Letters do not even address the issue of interference with operations. They do not mention operations between MPs AKL 39.00 and AKL 41.00. GRLW has not provided CSXT with sufficient information to determine whether the proposed operations over the island segment between MPs AKL 41.00 and AKL 45.00 will result in interference. GRLW merely hypothesizes 1,000 carloads per year evenly spread over 260 days. GRLW has not addressed delivery of empty cars. GRLW has not addressed how its new operations will impact the existing interchange between MPs AKL 41.0 and AKL 39.9. GRLW has not addressed length of trains, time of day of operations, speed of trains, availability of crews, availability of equipment, guaranteed priority for CSXT trains, or provided a detailed operating plan for use of the single track line, among other facts CSXT needs to be able to determine whether GRLW's expanded use of CSXT's property will interfere with CSXT's operations.

GRLW has not proposed the level of compensation to be paid to CSXT for use of CSXT's tracks, yards and other facilities necessary to accommodate the traffic between the GRLW and NS. Nor has GRLW provided any information on its capital contribution to maintain the line that it proposes to handle over 520 GRLW additional trains per year (based on GRLW's claim of one loaded train per day, 5 days per week, with the need for one train of empty cars to be loaded for every loaded train). Thus, GRLW has not met its burden of adequately compensating CSXT.

GRLW also fails to address whether the traffic GRLW proposes to handle and interchange to NS will negatively impact traffic on CSXT. GRLW claims that CSXT has increased rates to the point where two prospective shippers have suspended plans to build transload facilities. Interestingly, GRLW fails to mention the increase in its revenue factors over the years. Transload traffic is very competitive. In claiming confidentiality, without any justification, GRLW is hiding the identity of the potential shippers and the volume of traffic and preventing CSXT from determining whether GRLW will divert traffic from CSXT, thereby negatively impacting CSXT's traffic. If it is determined that the traffic GRLW seeks to divert from CSXT will negatively impact CSXT's traffic, GRLW has not offered mitigation of the harm it will cause.

The claims used to support GRLW's request for trackage rights are different than the actual locations of railroads and interchanges. Neither Example 7 to the RIA nor Exhibit A to GRLW's May 10, 2019 letter, show the short line with a connection to another Class I railroad either directly or indirectly. GRLW admits that it can access NS via the Pickens Railway Company ("PKHP"), although GRLW claims that option has shortcomings. And PKHP has

indicated that it interchanges traffic with NS at Anderson, SC, which is about 10 miles from its connection with GRLW. STB Finance Docket No. 33288, *Pickens Railway Company-Purchase Exemption-CSX Transportation, Inc.* (STB served February 14, 1997). Moreover, the connection of GRLW to NS via PKHP prohibits GRLW from requesting CSXT to examine its costs and relevant market conditions in determining the fee to be charged to GRLW for access over CSXT.

Finally, GRLW has not proposed an agreement covering the standard terms necessary for one railroad to operate over another, which is necessary for CSXT to evaluate whether the trackage rights sought by GRLW will cause unreasonable interference with CSXT's operations.

CSXT cannot work cooperatively with GRLW to consider the request for trackage rights without the benefit of GRLW providing the detailed requirements of the RIA and resolving the issues set forth in this letter. CSXT looks forward to cooperating with GRLW to address the request for trackage rights once all of the necessary information is furnished. In the interim, CSXT must again reject your request for failing to meet the requirements of the RIA.

Best regards,

A handwritten signature in cursive script, reading "Anthony DiDeo".

Anthony DiDeo

Cc: Ed Harris, EVP Operations

Mark Wallace, EVP & Chief Sales and Marketing Officer

Tom Tisa, Head of Marketing Strategic Development

APPENDIX 6

LAW OFFICE
THOMAS F. McFARLAND, P.C.
208 SOUTH LA SALLE STREET - SUITE 1666
CHICAGO, ILLINOIS 60604-1228
TELEPHONE (312) 236-0204
mcfarland@aol.com

THOMAS F. McFARLAND

June 21, 2019

*By e-mail to tony_dideo@csx.com
with confirmation by U.S. mail*

Mr. Anthony DiDeo
Director Intercarrier Management
CSX Transportation, Inc.
500 Water Street - J-801
Jacksonville, FL 32202

Re: Greenville & Western Railway (GRLW) Request for Trackage Rights over CSXT

Dear Mr. DiDeo:

Mr. Steven C. Hawkins, CEO and President of GRLW, has requested that I respond to your letter of May 30, 2019 to him. Please forward this response to a CSXT attorney if you deem that to be advisable.

You are correct that GRLW does not have trackage rights over CSXT between MP AKL 39.00 and MP AKL 41.00 except for the purpose of interchange between GRLW and CSXT on that segment of track. Accordingly, GRLW hereby amends its request for trackage rights over CSXT to encompass six miles of rail line between MP AKL 39.00 and MP AKL 45.00^{1/}.

You are also correct that GRLW should have demonstrated compliance with three conditions set forth in Section III, page 3, of the Railroad Industry Agreement (RIA). We do so below.

- (1) the incremental traffic caused by the new business can be handled without causing unreasonable interference with CSXT's operations.

There would be no such interference because the incremental traffic would be modest in volume, and because the proposed trackage rights segment is underutilized. Specifically:

^{1/} The requested trackage rights would enable GRLW to interchange traffic with Norfolk Southern at or near Piedmont, SC, (MP AKL 45.00), not at or near Anderson, SC, as stated in the first paragraph of your letter. Traffic is interchanged between Pickens Railway and Norfolk Southern at Anderson, SC.

Mr. Anthony DiDeo
June 21, 2019
Page 2

- (a) the incremental traffic would consist of approximately carloads per year;
 - (b) CSXT does not provide rail service for any shippers over the proposed trackage rights segment, except for traffic interchanged with GRLW at and near MP AKL 41.0;
 - (c) CSXT operates over the proposed trackage rights segment only three days per week solely to interchange with GRLW;
 - (d) in view of the foregoing, the incremental traffic caused by the new business can easily be accommodated by CSXT.
2. CSXT will be adequately compensated for use of its tracks necessary to accommodate traffic between GRLW and Norfolk Southern.
- (a) GRLW will negotiate in good faith for rail industry standard trackage rights compensation for CSXT for use of the proposed trackage rights segment;
 - (b) in the unlikely event that agreement is not reached in negotiation, GRLW would abide by the widely accepted railroad industry formula for trackage rights compensation set forth in *St. Louis Southwestern Ry. Co. -- Trackage Rights over Missouri Pacific R. Co. -- Kansas City to St. Louis Trackage Rights Compensation*, 4 I.C.C. 2d.668 (1988);
 - (c) in either event, CSXT will be assured of adequate compensation for use of its tracks.
3. CSXT's traffic would not be negatively impacted by the New Traffic

As set forth below, CSXT is not currently participating in the New Traffic and has not handled that traffic in the past. Accordingly, the New Traffic would not negatively impact CSXT's traffic.

You are correct that GRLW is required to demonstrate that the traffic proposed to be transported over the trackage rights segment is New Traffic within the definition of that term in the RIA. GRLW complies with that requirement below^{2/}.

^{2/} In order to protect the confidentiality of the business of the shipper who would supply the New Traffic, CSXT is asked to sign a standard non-disclosure agreement attached to this correspondence whereby the identity and traffic of that shipper would not be made public by CSXT.

4. The New Traffic is not now moving by rail

Shipper has under consideration construction of a new rail-to-truck transload Facility on GRLW's rail line at Williamston, SC. The product that would be transloaded via that facility is currently being transported in all-truck service :

, i.e., *that product is not now moving by rail*. Shipper is considering rail shipment of that product to a proposed transloading facility on GRLW at Williamston because that would enable Shipper to have an on-hand supply of the product closer to the than if the product were continued to be transported by truck.

5. The New Traffic would not unreasonably negatively impact CSXT

Inasmuch as the proposed New Traffic is not being transported over CSXT at present (see 4 above), and has not been transported by CSXT in the past, it cannot be said that such New Traffic would negatively impact CSXT at all.

6. As shown in 4 above, the proposed traffic of the Shipper constitutes New Traffic as defined in Section II, page 1, of the RIA.

For multiple reasons explained below, reasonable access for GRLW to Norfolk Southern is not provided by a 12-mile rail line owned by Pickens Railway (PKHP) between GRLW at Belton, SC (MP AKL 29.03) and Norfolk Southern at Anderson, SC, i.e.:

- (a) PKHP is FRA Excepted track. That limits hazardous material shipments to five cars per train, and effectively eliminates the possibility of GRLW customers from using NS routing for unit train shipments.
- (b) PKHP is 10 mph track. That limits the expediency by which PKHP can handle traffic between Belton and Anderson, SC.
- (c) PKHP is a 263,000-lb. restricted route. In contrast to GRLW which is a 286,000-lb. capable at all stations, PKHP is restricted to 263,000-lb. gross weight on rail, primarily due to advanced age and lighter weight of its rail.
- (d) PKHP adds a third carrier to routing. That makes PKHP routes inherently more expensive.
- (e) PKHP routing effectively restricts new business opportunities. In view of all of the foregoing restrictions, almost all new business opportunities are forced to move solely via GRLW-CSXT routing, That effectively precludes GRLW-PKHP-NS routing.

Mr. Anthony DiDeo

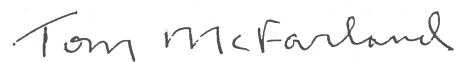
June 21, 2019

Page 4

It is respectfully submitted that the foregoing matter collectively satisfies all of the requirements of the RIA for a grant of trackage rights for New Traffic. While it may be necessary for there to be implementing documents in place before trackage rights operations can commence, such as an operating plan and a formal trackage rights agreement referred to in your letter, those are not requirements for a determination of whether to grant trackage rights for New Traffic at this stage of a RIA proceeding.

Please respond to this request or have a CSXT attorney respond to this request for trackage rights within 20 days from your receipt of this request, i.e., on or before July 11, 2019.

Very truly yours,

A handwritten signature in dark ink that reads "Tom McFarland". The signature is written in a cursive, slightly slanted style.

Thomas F. McFarland

TMcF:mg:1841\ltrTDD1

NON-DISCLOSURE AGREEMENT

RECITALS

WHEREAS, Greenville & Western Railway (GRLW) has requested that CSX Transportation, Inc. (CSXT) grant trackage rights to GRLW over six miles of CSXT rail line between MP AKL 39.0 at or near Pelzer, SC and MP AKL 45.0 at or near Piedmont, SC (the proposed trackage rights segment); and

WHEREAS, in a letter to CSXT dated May 10, 2019, GRLW has represented to CSXT that the traffic that would be transported across the proposed trackage rights segment is New Traffic within the definition of that term in the Railroad Industry Agreement (RIA), i.e., traffic not now moving by rail and would not negatively impact CSXT's traffic; and

WHEREAS, in a letter to GRLW dated May 30, 2019, CSXT has stated that GRLW is required to identify the shipper and its traffic that would be transported over the proposed trackage rights segment; and

WHEREAS, the identity of that shipper and its New Traffic is commercially sensitive information that could cause substantial harm to the competitive position of that shipper and its traffic, if it were to be disclosed to any third party; and

WHEREAS, in a letter being sent to CSXT in response to CSXT's letter of May 30, 2019, GRLW has stated that it will disclose the identity of that shipper and its traffic to CSXT if CSXT agrees to sign this simple Non-Disclosure Agreement.

NOW, THEREFORE, in view of the mutual promises contained herein, and other valuable consideration, GRLW and CSXT hereby agree as follows:

UNDERTAKINGS

1. An authorized representative of CSXT will sign this Non-Disclosure Agreement that is being sent to CSXT along with a letter of GRLW dated June 21, 2019 in response to CSXT's letter to GRLW of May 30, 2019; and
2. CSXT will send the signed Non-Disclosure Agreement to GRLW; and
3. Upon receipt of the signed Non-Disclosure Agreement, GRLW will send to CSXT the identity of the subject shipper and an estimate of that shipper's traffic over the proposed trackage rights segment in the first year of operation over that segment.

AGREED:

*Authorized Representative
of CSX Transportation, Inc.*

Thomas F. McFarland
*Authorized Representative
of Greenville & Western
Railway Company*

APPENDIX 7

LAW OFFICES OF
LOUIS E. GITOMER, LLC

LOUIS E. GITOMER
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July 14, 2019

Thomas F. McFarland, Esq.
Thomas F. McFarland, P.C.
208 South LaSalle Street – Suite 1666
Chicago, IL 60604-1228

RE: Greenville & Western Railway (GRLW) request for Trackage Rights over CSXT

Dear Tom:

Tony DiDeo has asked me to respond on behalf of CSX Transportation, Inc. (“CSXT”) to your June 21, 2019 letter on behalf of GRLW responding to his May 30, 2019 letter.

To facilitate the process, I have executed the Non-Disclosure Agreement (copy enclosed) and will have the CSXT personnel involved in this matter also execute the NDA and forward copies to you.

CSXT appreciates the information provided to date by GRLW, and the offer to disclose the shipper’s name and its traffic. In disclosing the traffic, CSXT expects GRLW to provide the following information on the traffic: commodity (including STCC); traffic volume (including both loaded and empty cars) on a daily, weekly, and monthly basis; equipment used, and whether there will be unit trains and the length of those trains. In addition, please provide the location of the interchange between GRLW and the Norfolk Southern Railway Company, GRLW’s detailed proposed operating plan over CSXT, particularly describing GRLW’s plan to avoid interference with CSXT’s operations. The plan for training GRLW’s employees to operate over CSXT should be provided, along with a commitment to pay CSXT’s costs involved.

In the April 5, 2019 letter to CXT, Mr. Hawkins referred to a Commercial General Liability insurance policy. Please provide a copy.

Thomas F. McFarland, Esq.

July 15, 2019

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This response does not waive any of CSXT's rights under the Rail Industry Agreement. Nor, is it an agreement or acceptance of any of the proposals or statements in the letters from GRLW and you. Once, CSXT receives and reviews this information, it will provide a further response to the request for trackage rights.

Let me know if you have any questions.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Lou".

Louis E. Gitomer
Counsel for CSX Transportation, Inc.

NON-DISCLOSURE AGREEMENT

RECITALS

WHEREAS, Greenville & Western Railway (GRLW) has requested that CSX Transportation, Inc. (CSXT) grant trackage rights to GRLW over six miles of CSXT rail line between MP AKL 39.0 at or near Pelzer, SC and MP AKL 45.0 at or near Piedmont, SC (the proposed trackage rights segment); and

WHEREAS, in a letter to CSXT dated May 10, 2019, GRLW has represented to CSXT that the traffic that would be transported across the proposed trackage rights segment is New Traffic within the definition of that term in the Railroad Industry Agreement (RIA), i.e., traffic not now moving by rail and would not negatively impact CSXT's traffic; and

WHEREAS, in a letter to GRLW dated May 30, 2019, CSXT has stated that GRLW is required to identify the shipper and its traffic that would be transported over the proposed trackage rights segment; and

WHEREAS, the identity of that shipper and its New Traffic is commercially sensitive information that could cause substantial harm to the competitive position of that shipper and its traffic, if it were to be disclosed to any third party; and

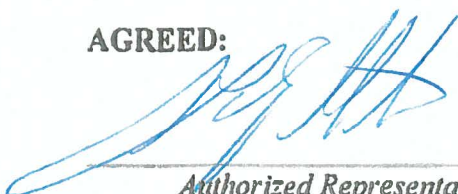
WHEREAS, in a letter being sent to CSXT in response to CSXT's letter of May 30, 2019, GRLW has stated that it will disclose the identity of that shipper and its traffic to CSXT if CSXT agrees to sign this simple Non-Disclosure Agreement.

NOW, THEREFORE, in view of the mutual promises contained herein, and other valuable consideration, GRLW and CSXT hereby agree as follows:

UNDERTAKINGS

1. An authorized representative of CSXT will sign this Non-Disclosure Agreement that is being sent to CSXT along with a letter of GRLW dated June 21, 2019 in response to CSXT's letter to GRLW of May 30, 2019; and
2. CSXT will send the signed Non-Disclosure Agreement to GRLW; and
3. Upon receipt of the signed Non-Disclosure Agreement, GRLW will send to CSXT the identity of the subject shipper and an estimate of that shipper's traffic over the proposed trackage rights segment in the first year of operation over that segment.

AGREED:



*Authorized Representative
of CSX Transportation, Inc.*

Thomas F. McFarland

*Authorized Representative
of Greenville & Western
Railway Company*

APPENDIX 8

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1666
CHICAGO, ILLINOIS 60604-1228
TELEPHONE (312) 236-0204
mcfarland@aol.com

THOMAS F. MCFARLAND

July 26, 2019

By e-mail to lou@lgraillaw.com

Louis E. Gitomer, Esq.
Louis E. Gitomer, LLC
600 Baltimore Avenue
Suite 301
Towson, MD 21204-4022

Re: Greenville & Western Railway (GRLW) request for Trackage Rights over CSXT

Dear Lou:

This responds to your letter to me of July 14 in regard to the above subject, and provides information and documents that you requested, as follows:

1. The shipper is .
2. The commodity is .
3. The STCC No. is .
4. The current traffic volume is loaded cars per year or approximately cars per month, with a corresponding number of empty cars.
5. Equipment is .
6. There will be no unit trains.
7. Unit train length is not applicable.
8. The location of the NS interchange is Piedmont, SC, Milepost AKL 44.95, see attached print.
9. Detailed Operating Plan
CSXT operates F797 as an advertised job Sun-Wed and calls it as an extra on Thu/Fri, thus operating 7 days per week. F797 only services GRLW's Pelzer, SC interchange

Louis E. Gitomer, Esq.

July 26, 2019

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(between MP AKL 41.0 and MP AKL 39.0) on Sun/Tue/Thu (typically delivering and pulling between 00:01 and 02:00 Mon/Wed/Fri). F797 only works south of MP AKL 51.95 on Sun/Tue/Thu. No regularly scheduled job works south of MP AKL 51.95 Mon/Wed/Fri/Sat.

GRLW operates Z590 on Mon/Wed/Fri, serving the Pelzer, SC interchange on Sun/Tue/Thu, thus operating 3 days per week. Current operations do not overlap and this same schedule can be maintained by CSXT and GRLW without ANY operational interference at all if Trackage Rights from MP AKL 39.0 to MP AKL 45.0 are granted to GRLW by CSXT.

Both parties currently curtail local operations (if/as needed) to accommodate GRLW-destined unit ethanol trains twice each month. This same process can be maintained by CSXT and GRLW without ANY operational interference at all if Trackage Rights from MP AKL 39.0 to MP AKL 45.0 are granted to GRLW by CSXT.

10. The plan to avoid interference with CSXT's operation is included in the Detailed Operating Plan.
11. GRLW T&E employees are already qualified to operate over CSXT between MP AKL 39.0 and MP AKL 41.0 and a single hyrail familiarization trip is all that would be required (by CFR) for ALL five (5) GRLW employees to be able to operate trains between MP AKL 41.0 and MP AKL 45.0. GRLW would be willing to reimburse CSXT the reasonable cost associated with a CSXT manager accommodating such hyrail familiarization trip.
12. CGL Insurance Policies are attached (\$15 million primary, \$10 million excess).

Upon review of the above information and attached documents, please acknowledge that CSXT will grant the proposed trackage rights to GRLW.

Very truly yours,



Thomas F. McFarland
Attorney for Greenville & Western Railway

Louis E. Gitomer, Esq.

July 26, 2019

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cc: Mr. Steven Hawkins, *steven.hawkins@wcrscorp.com*
Mrs. Cheryl Hawkins, *cheryl.hawkins@wcrscorp.com*
Marshall Lawson, Esq., *marshall.lawson@wcrscorp.com*

Piedmont, SC

CSXT

NS

Piedmont Christian Academy

MP AKL 45.00

MP AKL 44.95

MP V 131.9

North

CSXT

Google

APPENDIX 9

LAW OFFICES OF
LOUIS E. GITOMER, LLC

LOUIS E. GITOMER
Lou@lgrailaw.com

MELANIE B. YASBIN
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(410) 296-2250 * (202) 466-6532
FAX (410) 332-0885

September 11, 2019

Thomas F. McFarland, Esq.
Thomas F. McFarland, P.C.
208 South LaSalle Street – Suite 1666
Chicago, IL 60604-1228

RE: Greenville & Western Railway request for Trackage Rights over CSXT

Dear Tom:

Thank you for the response from Greenville & Western Railway (“GRLW”) to the questions raised by CSX Transportation, Inc. (“CSXT”) concerning GRLW’s request for trackage rights over approximately six miles of CSXT trackage between MP AKL 39.00 and MP AKL 45.00 pursuant to Section III, page 3 of the Rail Industry Agreement (the “RIA”).

CSXT has reviewed the information provided in the July 26, 2019 letter, as well as the information provided in all previous letters from GRLW. CSXT understands that GRLW seeks the trackage rights in order to handle _____ to a proposed transload facility that has yet to be constructed but which GRLW expects to locate on GRLW’s line.

After an analysis of GRLW’s request, the RIA, and CSXT’s ability to provide the rail transportation and transloading of _____, CSXT concludes that the requested trackage rights are not governed by the RIA, and even if they were, the proposed trackage rights do not meet the requirements of the RIA.

GRLW has noted numerous times that it can access the destination line over the Pickens Railway Company (the “PICK”). There is no interchange commitment or other restriction created by CSXT that would prevent GRLW from accessing the destination line through interchange with another carrier such as the PICK. In Exhibit C to the RIA, Guidelines for Paper Barriers and New Routes, none of the examples require access over the large railroad where the short line has access to the destination over an alternate route. Therefore, CSXT reaffirms its previously communicated conclusion that the RIA does not apply to, much less support GRLW’s claimed right to, the trackage rights that GRLW is seeking.

Even if the RIA applied to GRLW’s request, its operation via trackage rights over CSXT would harm CSXT. CSXT handles _____ on its railroad. CSXT has equipment available to transport _____. CSXT has an existing Transload facility at Greenville, SC, within

Thomas F. McFarland, Esq.
September 11, 2019
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about 20 miles of Williamston, SC. CSXT has concluded that it can provide competitive rail service for the . CSXT would be able to offer the shipper a competitive rate and reasonable service. However, to the best of CSXT's knowledge, the shipper has not asked CSXT to quote a rate or provide a service plan for the shipment of , into . CSXT has concluded that movement of the to Williamston, SC using trackage rights over CSXT would negatively impact CSXT because such traffic can be handled by CSXT.

CSXT denies GRLW's request for trackage rights because it does not fall within the scope of the RIA. Moreover, the provisions of the RIA do not require CSXT to provide the trackage rights requested by GRLW.

Let me know if you have any questions.

Sincerely yours,

/s/ *Leu*

Louis E. Gitomer
Counsel for CSX Transportation, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2019, I served the foregoing Motion For Leave To Amend Complaint to Commence Arbitration Under C.F.R. § 1108.5(a) by e-mail on Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204-4022, at lou@lgraillaw.com.

Thomas F. McFarland

Thomas F. McFarland

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2019, I served the foregoing Amended Complaint to Commence Arbitration Under C.F.R. § 1108.5(a) by e-mail on Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204-4022, at lou@lgrailaw.com.

Thomas F. McFarland

Thomas F. McFarland