

ORIGINAL

Before the

SURFACE TRANSPORTATION BOARD

Docket No. FD 36326

**BROOKFIELD ASSET MANAGEMENT, INC AND DIP XX, LLC-
CONTROL EXEMPTION-GENESEE & WYOMING, INC., ET AL.**



248458

**PETITION FOR LEAVE TO REPLY,
AND REPLY TO APPLICANTS' RESPONSE**

ENTERED
Office of Proceedings
September 10, 2019
Part of
Public Record

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Preliminary Statement

Samuel J. Nasca, New York State Legislative Director for SMART/TD, submits this petition for leave to reply to the Response, filed September 9, yesterday, of applicants Brookfield Asset Management (Brookfield), which Response seeks to have the STB not accept the SMART/TD-NY(Nasca) Reply, filed earlier on September 5, 2019.

The applicants assert the Nasca September 5 filing was untimely. (Brookfield, 1-2). The Board should grant leave for Nasca to reply to the asserted failure to

make a timely filing, and thereupon permit the Nasca reply herein to the Brookfield assertion.

1. Petition for Leave to File. Although reply-to-reply is not favored, here such would not seek to introduce new evidence or argument on the merits, but goes to the Board's procedural order of July 22, 2019. The Brookfield notice of exemption is of utmost importance to U.S. international trade relations, and to the interest of U.S. rail carrier employees, as well as to U.S. agricultural interests, among other concerns. The Board should grant SMART/TD-NY opportunity for reply to the Brookfield charge of noncompliance with the STB's July 22, 2019 action.

2. The SMART/TD-NY Filing is Timely. Brookfield has misunderstood the Board's procedure. The July 22 decision does not mandate a party (or person), submit initial comments to qualify for filing replies. Moreover, the July 22 decision encourages supplemental filings, in this quasi-expedited proposed exemption proceeding. The Board frequently employs the comment procedure in its ex parte rulemaking proceedings, without requiring a respondent to first file initial comments. Indeed, a person may not develop a desire to file any comments until first reviewing the so-called initial comments of others.

SMART/TD in its September 5 reply fully disclosed why it could not meet

an initial August 21, 2019 filing date. (NASA Reply, 3 & n.3; 6). Brookfield now contends that the mere two-day interval between its 17-page supplemental Brookfield August 19, 2019 public filing receipt at the STB's website, on the one hand, and the August 21, 2019 due date for comments, on the other hand, would have been sufficient for any SMART/TD-NY reply. (Brookfield, 9/9/19, 1). The Brookfield argument is absurd.

Respectfully submitted,



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September 10, 2019

Attorney for Samuel J. Nasca

Certificate of Service

I hereby certify I have served a copy of the foregoing upon all parties of record by first class mail postage-prepaid.

Washington DC



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