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September 26, 2024

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

ENTERED
Office of Proceedings
September 26, 2024
Part of
Public Record

Re: **Docket No. FD 36776 (Sub-No. 1), CSX Transportation, Inc.—Trackage
Rights—Norfolk Southern Railway Company**

Dear Ms. Brown:

Enclosed is a Petition for Partial Revocation of Trackage Rights Class Exemption. A filing fee of \$350 has been paid through Pay.gov for a Petition to Revoke filed under 49 U.S.C. 10502(d).

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,

/s/ *Louis E. Gitomer*

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

FILED
September 26, 2024
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
September 26, 2024
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. 36776 (SUB-NO. 1)

CSX TRANSPORTATION, INC.
-- TRACKAGE RIGHTS EXEMPTION--
NORFOLK SOUTHERN RAILWAY COMPANY

PETITION FOR PARTIAL REVOCATION
OF TRACKAGE RIGHTS CLASS EXEMPTION

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: September 26, 2024

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SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36776 (SUB-NO. 1)

CSX TRANSPORTATION, INC.
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PETITION FOR PARTIAL REVOCATION
OF TRACKAGE RIGHTS CLASS EXEMPTION

Pursuant to the requirements of 49 U.S.C. § 10502(d) and 49 C.F.R. Part 1121, CSX Transportation, Inc. (“CSXT”) petitions the Surface Transportation Board (the “Board”) for the partial revocation of the Board’s trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7), as necessary to permit the trackage rights arrangement exempted in Docket No. FD 36776 to expire at the time agreed to by CSXT and Norfolk Southern Railway Company (“NSR”).

As described in the Notice of Exemption filed concurrently in Docket No. FD 36776, CSXT and NSR have agreed that CSXT could re-route traffic over certain NSR lines while CSXT’s Howard Street Tunnel in Baltimore, MD (the “HST”) is closed during the HST rebuild project (the “HST Project”). CSXT will have overhead trackage rights over the following lines of NSR: (1) **The Bay Route.** The NSR rail line between CP Bay, at or near Milepost 91.9¹, and the connection between NSR and CSXT, at or near milepost IP 0.41, a distance of approximately 2.8 miles. These trackage rights will allow CSXT to operate between NSR’s Bayview Yard and CSXT’s Bayview Yard, and between NSR’s Bayview Yard and IP 0.41; and (2) **The Harrisburg Route.** The NSR rail lines (a) between Lurgan, PA (at or near milepost LG 40.1/HW 40.1) and Norristown, PA at CP Norris, PA (at or near Milepost HP 18.0), a distance of

¹ CSXT will access the NS line at CP Bay via rights that it has to operate over Amtrak’s North East Corridor.

approximately 148.3 miles; and (b) between CP Falls (at or near Milepost HP 5.4) and a connection with CSXT's Philadelphia Subdivision at CP Laurel Hill (at or near Milepost QA 2.9), a distance of approximately 0.5 miles, a total distance of about 148.8 miles (The Bay Route and Harrisburg Route are collectively referred to as the "Lines").

NSR has agreed to grant CSXT overhead trackage rights over the Lines for the duration of the HST Project, which CSXT expects to take approximately two years or more to complete. The overhead trackage rights will commence shortly before or once CSXT has stopped providing service through the HST. Upon completion of the HST Project, CSXT will again route traffic through the HST and CSXT will no longer need to operate over the Lines. CSXT has agreed with NSR to terminate the overhead trackage rights on the Lines when the HST Project is complete, the HST is reopened, and CSXT has begun to move rail traffic through the HST.

To ensure NSR that CSXT will be authorized to terminate use of the overhead trackage rights over the Lines once the HST Project is complete, the HST is reopened, and CSXT has begun to move rail traffic through the HST, CSXT is filing this Petition well in advance of the completion of the HST Project.

While CSXT and NSR have expressly agreed that the overhead trackage rights will expire at that time, trackage rights authorized under the class exemption at 49 CFR 1180.2(d)(7), remain effective indefinitely, regardless of the duration agreed to by the parties.² Therefore, absent the partial revocation requested by this Petition, CSXT would need to file separately for discontinuance authority in order to uphold the terms of the Agreement.

² See *Wis. Dep't of Transp.—Pet. for Declaratory Order—Rail Lines in Janesville, Rock Cnty., Wis.*, FD 35301, slip op. at 4 n.7 (STB served Dec. 11, 2009) and *Union Pac. R.R. Co.—Trackage Rights Exemption—The Burlington N. & Santa Fe Ry. Co.*, FD 33712 (Sub-No. 1) (STB served March 12, 1999).

Under 49 U.S.C. § 10502(d), the Board “may revoke an exemption, to the extent it specifies, when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out” the rail transportation policy of 49 U.S.C. § 10101. By eliminating the need to file a second pleading seeking discontinuance when the arrangement expires by its terms, granting this Petition would promote the following rail transportation policy goals: minimizing the need for Federal regulatory control (49 U.S.C. § 10101(2)); ensuring the continuation of a sound rail transportation system to meet the public need (§ 10101(4)); ensuring coordination between rail carriers (§ 10101(5)); reducing regulatory barriers to entry into and exit from the industry (§ 10101(7)); and providing for the expeditious handling and resolution of this proceeding (§ 10101(15)).

Furthermore, limiting the term of these trackage rights is consistent with the limited scope of the transaction in Finance Docket No. 36776. The partial revocation will have no adverse impact on shippers since CSXT will reroute the overhead rail traffic from the Lines to routes using the HST. Finally, the Board and its predecessor have granted similar petitions for partial revocation to permit trackage rights to expire. *See e.g., BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, Docket No. FD 36377 (sub-No. 5) (served February 7, 2022).

The applicable labor protective conditions for the discontinuance of the temporary trackage rights pursuant to this petition are those imposed in *Oregon Short Line Railroad Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

In conclusion, CSXT respectfully requests the Board to partially revoke the trackage rights class exemption to the extent necessary to permit the trackage rights authorized in Docket

No. FD 36376 to expire upon completion of the HST Project, reopening the HST, and CSXT moving rail traffic through the HST.

CSXT agrees to notify the Board once it has terminated the trackage rights.

Respectfully submitted,

/s/ Louis E. Gitomer

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