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September 29, 2020

By Electronic Submission

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
September 29, 2020
Part of
Public Record

RE: *Commonwealth of Virginia – Acquisition Exemption – CSX Transportation, Inc. In
Washington, D.C. and Virginia, STB Docket No. FD 36441*

Dear Ms. Brown:

Enclosed please find, submitted on behalf of the Department of Rail and Public Transit of the Commonwealth of Virginia (“DRPT”), a Petition for Exemption for the acquisition of a rail line of CSX Transportation, Inc. (“CSXT”) and a Motion to Dismiss the Petition for Exemption.

I have also enclosed a Motion for Protective Order to file Confidential and Highly Confidential versions of the Motion to Dismiss under seal. The Confidential and Highly Confidential information in the Motion to Dismiss is located only in the exhibits. Complete copies of the Confidential and Highly Confidential versions of the Motion to Dismiss will be filed simultaneously but separately under seal.

DRPT will submit a filing fee in the amount of \$16,200 through Pay.gov. However, DRPT hereby requests a waiver of the filing fee based on the fact that it is a state government entity and it is filing the Petition for Exemption and Motion to Dismiss on behalf of the general public. See 49 C.F.R. § 1002.2(e)(1).

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,



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FEE RECEIVED
September 29, 2020
SURFACE TRANSPORTATION BOARD

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36441

**COMMONWEALTH OF VIRGINIA
--ACQUISITION AND OPERATION OF CERTAIN ASSETS OF
CSX TRANSPORTATION, INC. IN WASHINGTON, D.C. AND VIRGINIA
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901**

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Dated: September 29, 2020

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36441

**COMMONWEALTH OF VIRGINIA
--ACQUISITION AND OPERATION OF CERTAIN ASSETS OF
CSX TRANSPORTATION, INC. IN WASHINGTON, D.C. AND VIRGINIA
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901.**

Pursuant to 49 U.S.C. § 10502 and 49 C.F.R. Part 1121, the Commonwealth of Virginia, acting by and through its Department of Rail and Public Transportation (“DRPT”), hereby petitions the Surface Transportation Board (“Board”) for an exemption from the requirements of 49 U.S.C. § 10901 for the acquisition by DRPT of certain real property rights and trackage owned by CSX Transportation, Inc. (“CSXT”) and located in the Commonwealth of Virginia and the District of Columbia.¹

I. Statement of Facts

DRPT, a public agency created under the laws of the Commonwealth of Virginia and a non-carrier, and CSXT, a Class I common carrier by rail that owns and operates a rail corridor between Washington, D.C. (approximately milepost CFP 112) and Petersburg, Virginia (milepost A 29)(the “Subject Line”). DRPT and CSXT have reached an agreement pursuant to which DRPT will acquire a lateral, approximately 50 percent portion of the Subject Line.² CSXT will retain a permanent and exclusive freight railroad operations easement on the DRPT-

¹ DRPT anticipates that the Virginia Passenger Rail Authority (“VPRA”), which was created by legislation enacted by the Commonwealth of Virginia that became effective July 1, 2020, will succeed by assignment to all of the rights, responsibilities and obligations of DRPT in relation to the Transaction once the necessary executive and administrative processes for the establishment of VPRA have been completed. This assignment will take place after the Board’s decision on the Motion to Dismiss, discussed below.

² A Map depicting the Subject Line is attached hereto as Exhibit A.

owned portion of the Subject Line.³ Except for certain station-related air rights, DRPT's use of the DRPT-owned portion of the Subject Line will be limited to National Railroad Passenger Corporation ("Amtrak") and commuter passenger service. DRPT also will acquire from CSXT operating rights to permit operation of Amtrak intercity service and commuter rail service on the CSXT-owned portion of the Subject Line. DRPT and CSXT expect to close the above-described transaction for the Subject Line (the "Transaction") by December 15, 2020.⁴

The objective of the Transaction is to create interoperable additional freight and passenger rail network capacity on the Subject Line, pursuant to the CSXT engineering standards and operating rules at the time of construction or operation, respectively, in accordance with the Joint Operating and Maintenance Agreement. Accordingly, after closing a program of capital improvements will be constructed on the Subject Line in several phases over more than ten years. Beginning at closing and as the capital improvements are completed, there will be a gradual expansion of passenger rail service – Amtrak intercity service and Virginia Railway Express ("VRE") commuter rail service⁵ – on the Subject Line.

After completion of the planned construction program, to the extent feasible, CSXT and DRPT will dedicate the CSXT-owned portion of the Subject Line to freight rail service and the DRPT-owned portion of the Subject Line to passenger rail service. If complete separation of freight and passenger traffic is not feasible, some passenger service might remain on the CSXT-

³ DRPT has concurrently filed a Motion to Dismiss this Petition for Exemption (the "Motion to Dismiss"), because the transaction described in the Petition is not subject to the Board's jurisdiction. Maine, DOT - Acq. Exemption, ME, Central R. Co., 8 I.C.C. 2d 835 (1991).

⁴ The agreement between DRPT and CSXT also includes DRPT's acquisition of CSXT's interest in an abandoned 76.1-mile railroad right-of-way between Petersburg, VA (milepost A 29.04) and Ridgeway, NC (milepost S 100.1). This railroad right-of-way is not within the Board's jurisdiction and therefore is not within the scope of this Petition for Exemption.

⁵ VRE is a joint transportation partnership of the Potomac and Rappahannock Transportation Commission and the Northern Virginia Transportation Commission (the "Commissions") which provides commuter rail service between the Northern Virginia suburbs and Washington, D.C. VRE's commuter rail service is operated by a contractor pursuant to an agreement with the Commissions.

owned portion of the Subject Line and/or some freight rail service might remain on the DRPT-owned portion of the Subject Line. In any case, CSXT will retain its permanent and exclusive freight railroad operations easement on the DRPT-owned portion of the Subject Line.

II. Argument

Pursuant to 49 U.S.C. § 10502, the Board shall exempt a transaction from regulation when: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power. 49 U.S.C. § 10502.

Regulation of the Transaction is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (“RTP”). The Transaction does not involve a transfer of freight rights or freight operations, so many elements of the RTP (§§ 10101(1), (3), (4), (5), (6), (10) and (12)) are not even relevant. In fact, relieving DRPT for the otherwise-applicable requirements of 49 U.S.C. § 10901 would foster RTP elements favoring expeditious regulatory decisions, reduced regulatory barriers to entry, promotion of energy conservation and expeditious handling of proceedings before the Board. See 49 U.S.C. §§ 10101(2), (7), (14) and (15).

Because the Transaction does not involve a transfer of freight rights or freight operations, regulation is not necessary to protect shippers from the abuse of market power. Moreover, there will be no reduction in competition. 49 U.S.C. § 10502(2) (b). Although this factor alone satisfies the requirement of section 10502(2), it is worth noting that the Transaction is of limited scope. DRPT is acquiring real estate and trackage for continuation and expansion of existing Amtrak intercity and VRE commuter passenger rail service.

III. Rail Exemption Procedural Requirements

1. Environmental and Historic Preservation 49 C.F.R. § 1121.3(b)

The Transaction does not require the preparation of environmental documentation under 49 C.F.R. § 1105.6(c)(1) because it will not result in changes in freight carrier operations that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) and (5).

The Transaction is excepted from historic preservation reporting requirements of 49 C.F.R. § 1105.8(b)(1) because there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. The DRPT-portion of the Subject Line could not be removed until CSXT receives abandonment authority from the Board.

2. Interchange Commitments 49 C.F.R. § 1121.3(d)

The Transaction does not involve a transfer of freight rights or freight operations and therefore does not include a provision or agreement that would limit future interchange with a third party connecting carrier.

IV. Conclusion

For the reasons stated above, DRPT respectfully requests that the Board grant DRPT's Petition of Exemption.

Respectfully submitted,



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EXHIBIT A
MAP

Subject Line

