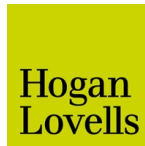


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September 27, 2021

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

RE: *Commonwealth of Virginia – Acquisition and Operation of Certain Assets of CSX Transportation, Inc. in Allegheny, Bath, Rockbridge, Augusta, Nelson, Albemarle, Orange, Louisa and Hanover Counties, and the Cities of Staunton, Waynesboro, and Charlottesville, Virginia*, STB Docket No. FD 36544

Dear Ms. Brown:

Enclosed please find, submitted on behalf of the Virginia Passenger Rail Authority of the Commonwealth of Virginia ("VPRA"), 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 documents relating to this proceeding under seal, particularly exhibits to the Motion to Dismiss. Complete copies of the Confidential and Highly Confidential documents will be filed simultaneously but separately under seal.

DRPT will submit a filing fee in the amount of \$15,400 through Pay.gov. However, VPRA 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,

A handwritten signature in black ink, appearing to read "K. Sheys", with a long horizontal stroke extending to the right.

Kevin M. Sheys
Kevin.sheys@hoganlovells.com
(202) 673-5600

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36544

**COMMONWEALTH OF VIRGINIA
--ACQUISITION AND OPERATION OF CERTAIN ASSETS OF
CSX TRANSPORTATION, INC. IN ALLEGHENY, BATH, ROCKBRIDGE, AUGUSTA,
NELSON, ALBEMARLE, ORANGE, LOUISA AND HANOVER COUNTIES, AND THE
CITIES OF STAUNTON, WAYNESBORO, AND CHARLOTTESVILLE, VIRGINIA**

PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901

PETITION INCLUDES COLOR EXHIBIT

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Counsel for Commonwealth of Virginia

Dated: September 27, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36544

**COMMONWEALTH OF VIRGINIA
--ACQUISITION AND OPERATION OF CERTAIN ASSETS OF
CSX TRANSPORTATION, INC. IN ALLEGHENY, BATH, ROCKBRIDGE, AUGUSTA,
NELSON, ALBEMARLE, ORANGE, LOUISA AND HANOVER COUNTIES, AND THE
CITIES OF STAUNTON, WAYNESBORO, AND CHARLOTTESVILLE, 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 Virginia Passenger Rail Authority (“VPRA”),¹ hereby petitions the Surface Transportation Board (“Board”) for an exemption from the requirements of 49 U.S.C. § 10901 for the acquisition by VPRA of certain real property rights and trackage on approximately 164.22 miles of railroad line currently owned by CSX Transportation, Inc. (“CSXT”) located between approximately milepost 276.0 in the town of Clifton Forge in Allegheny County and milepost 111.78 in the town of Doswell in Hanover County,² all in the Commonwealth of Virginia.³ Buckingham Branch Railroad Company (“BBRC”), a Class III

¹ VPRA was created by legislation enacted by the Commonwealth of Virginia that became effective July 1, 2020. *See* Va. Code § 33.2-287 *et seq.* As explained in the Petition for Exemption filed by the Virginia Department of Rail and Public Transportation (“DPRT”) on Sept. 29, 2020 in FD 36441, VPRA succeeds by assignment all of the rights, responsibilities and obligations of DPRT related to the transactions with CSXT detailed in FD 36441. VPRA is prohibited from directly operating any passenger, commuter, or other rail service by Va. Code Ann. § 33.2-292(B). All references to VPRA’s operation of trains herein are to rail passenger service performed by an operator under a contract with VPRA.

² The subject real property rights and trackage are referred to herein and defined in the relevant conveyances documents and agreements as “Segment 3.” The CSXT/VPRA transaction is sometimes referred to herein as the “Segment 3 Sale.” A Map depicting Segment 3 is attached hereto as Exhibit A.

³ VPRA has concurrently filed a Motion to Dismiss this Petition for Exemption (the “Motion to Dismiss”), because the transaction described in the Petition does not require Board authorization under 49 U.S.C. § 10901. *See, e.g., Commonwealth of Virginia – Acquisition Exemption – Certain Assets of CSX Transportation, Inc.*, FD 36441 (STB served Dec. 14, 2020), citing *Maine, DOT – Acq. Exemption – ME Central R. Co.*, 8 I.C.C. 2d 835 (1991).

railroad, has leased a line of railroad from CSXT that includes Segment 3 and has operated common carrier freight service on Segment 3 (*inter alia*) since 2004, subject to CSXT's retention of limited overhead trackage rights across the leased line.⁴

I. Statement of Facts

VPRA is a public authority created under the laws of the Commonwealth of Virginia and a non-carrier, and CSXT is a Class I common carrier by rail that owns Segment 3. VPRA and CSXT have reached an agreement pursuant to which CSXT will convey to VPRA all of its right, title and interest in Segment 3 by quitclaim deed ("Segment 3 Deed").⁵

Prior to the closing, CSXT and BBRC plan to convert BBRC's leasehold interest in Segment 3 to a permanent easement (referred to herein as the "Segment 3 BBRC Freight Easement"). The BBRC lease will be terminated with respect to Segment 3 upon the consummation of the Segment 3 BBRC Freight Easement transaction, at which point a new CSXT-BBRC operating agreement governing BBRC's operations on Segment 3 ("Segment 3 Operating Agreement") will take effect.⁶ BBRC has filed a Notice of Exemption to acquire the Segment 3 BBRC Freight Easement, and to continue its longstanding provision of common carrier service over Segment 3.⁷

⁴ See *Buckingham Branch Railroad Company-Lease-CSX Transportation, Inc.*, FD 34495 (STB served Nov. 5, 2004).

⁵ The Segment 3 Deed is provided as Exhibit A to the Motion to Dismiss.

⁶ The Segment 3 BBRC Freight Easement is attached as Exhibit D to the Motion to Dismiss. The Segment 3 Operating Agreement is attached as Exhibit E to the Motion to Dismiss.

⁷ See *Buckingham Branch Railroad Company—Acquisition and Operation Exemption with Interchange Commitment—CSX Transportation, Inc.*, FD 34495 (Sub. No. 1) (filed Sept. 2, 2021). If BBRC has not acquired the Segment 3 BBRC Freight Easement prior to CSXT's closing with VPRA, the CSXT-BBRC Lease Agreement will continue and CSXT will retain a permanent and exclusive easement for its freight rights on Segment 3, all until such time as such easement rights are conveyed to BBRC or a third party pursuant to Board authorization. In that case, VPRA will file a revised Segment 3 Deed showing CSXT's retained easement and a copy of the CSXT-BBRC Lease Agreement.

The CSXT conveyance to VPRA will be subject to CSXT's retained limited overhead trackage rights on Segment 3, which prohibit local service and are limited to the westbound movement of CSXT empty open top hopper car trains and empty covered hopper car trains and aggregate for CSXT's own use and at the time of the conveyance will constitute the only common carrier rights for freight operations by CSXT on Segment 3. CSXT's trackage rights have precluded CSXT from providing local service over the trackage rights route (of which Segment 3 is a portion) since the commencement of BBRC's leasehold operations over the lines that include Segment 3, and those overhead service limitations will remain in place upon CSXT's conveyance of Segment 3 to VPRA. The CSXT conveyance to VPRA also will be subject to the Segment 3 BBRC Freight Easement, which at the time of conveyance will contain the common carrier rights of BBRC.⁸ At the time of the CSXT conveyance to VPRA, the CSXT limited overhead trackage rights and the Segment 3 BBRC Freight Easement will together constitute all common carrier rights on Segment 3. Thus, VPRA's acquisition of Segment 3 will be subject to all common carrier rights on Segment 3. . The CSXT conveyance to VPRA also will be subject to the statutory and contract rights of Amtrak.⁹

Operations on Segment 3 after the closing of the Segment 3 Sale also will be governed by the Joint Operating and Maintenance Agreement between CSXT and VPRA ("JOMA"), which is attached as Exhibit C to the Motion to Dismiss, and the Comprehensive Rail Agreement between CSXT and VPRA ("CRA"), which is attached as Exhibit B to the Motion to Dismiss.

⁸ See Segment 3 Deed, Exhibit A to the Motion to Dismiss at 3.

⁹ See Segment 3 Deed, Exhibit A to the Motion to Dismiss at 3-4.

The objective of the Segment 3 Sale is to facilitate the expansion of passenger rail service on Segment 3. Presently, the only passenger train on Segment 3 is the Amtrak Cardinal, which traverses the portion of Segment 3 between Clifton Forge and Charlottesville three times per week in both directions.

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 Segment 3 Sale is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (“RTP”). The Segment 3 Sale 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 relevant. In fact, relieving VPRA from 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 Segment 3 Sale does not involve a transfer of freight rights or freight operations to VPRA, 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 § 10502(2), it is worth noting that the Segment 3 Sale is a transaction of limited scope. VPRA is acquiring real estate and trackage only for passenger rail service and subject to the CSXT limited overhead trackage rights and the Segment 3 BBRC Freight Easement.

III. Rail Exemption Procedural Requirements

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

The Segment 3 Sale 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 Segment 3 Sale 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.

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

The Segment 3 Sale 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.¹⁰

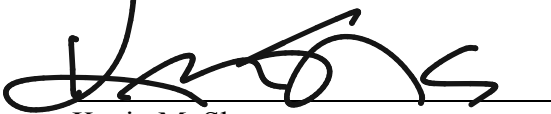
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¹⁰ The transfer of the Segment 3 BBRC Freight Easement is subject to an interchange commitment as explained in the Notice of Exemption referenced in Note 7, *supra*.

IV. Conclusion

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Sheys', written over a horizontal line.

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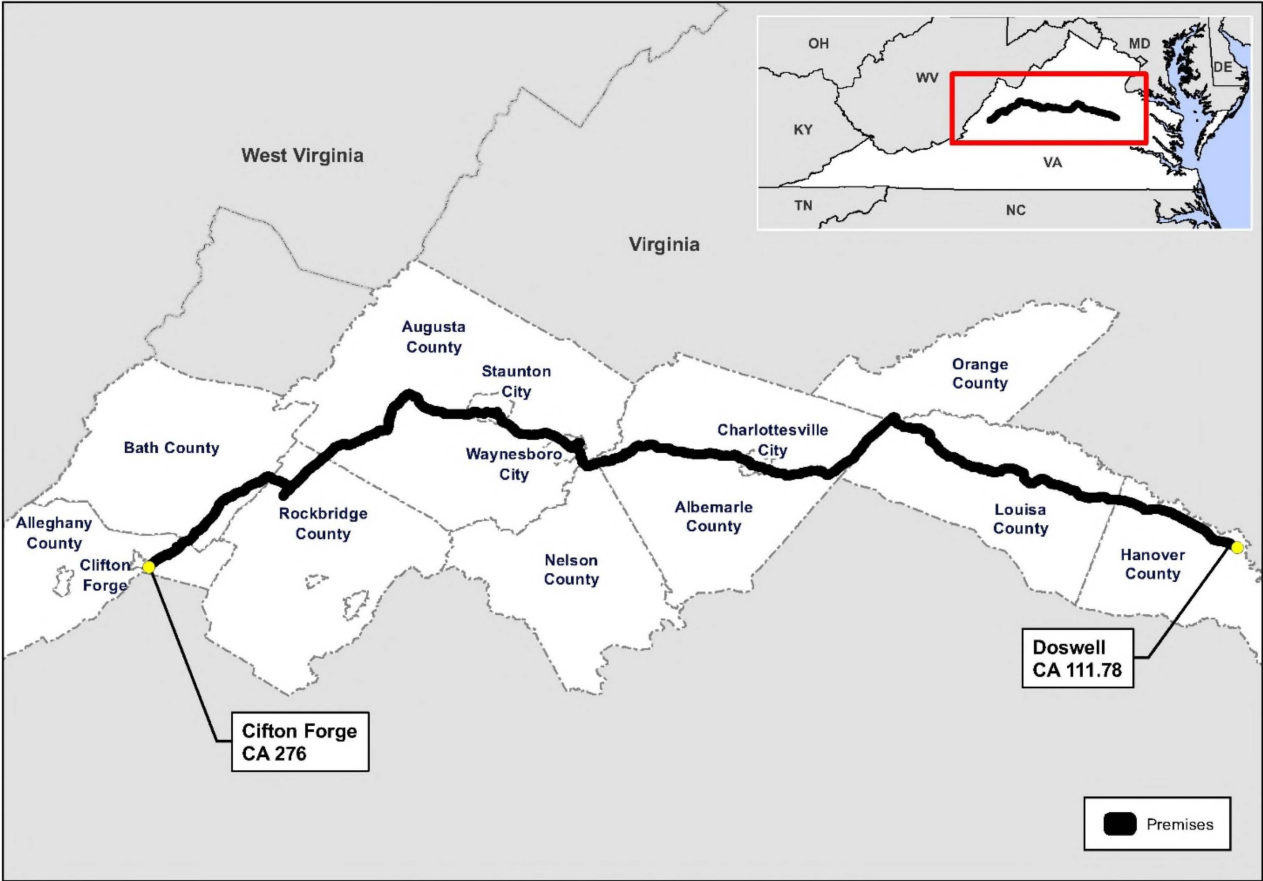
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(804) 786-9138

Counsel for the Commonwealth of Virginia

Dated: September 27, 2021

EXHIBIT A

MAP



CSX

VA TRANSACTION-DOSWELL TO CLIFTON FORGE
SITE: VA-760-0997353
ALBEMARLE COUNTY - RICHMOND, VA
MILEPOST: CA 111.78 - CA 276

0 5 10 20 30 40 Miles

