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November 21, 2023

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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
November 21, 2023
Part of
Public Record

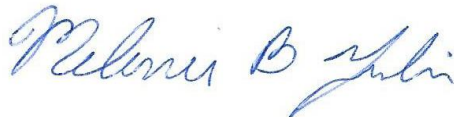
Re: **Docket No. AB-55 (Sub-No. 814X), CSX Transportation, Inc.—
Discontinuance of Trackage Rights Exemption—in Marengo and Choctaw
Counties, AL and Lauderdale County, MS**

Dear Ms. Brown:

Enclosed for electronic filing is supplemental information requested by the Board in its November 3, 2023, decision.

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

Sincerely yours,



Melanie B. Yasbin
Attorney for CSX Transportation, Inc.

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 814X)

CSX TRANSPORTATION, INC.–DISCONTINUANCE OF SERVICE EXEMPTION–
IN MARENGO AND CHOCTAW COUNTIES, AL AND LAUDERDALE COUNTY, MS

SUPPLEMENT

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: November 21, 2023

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 814X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF TRACKAGE RIGHTS
EXEMPTION—
IN MARENGO AND CHOCTAW COUNTIES, AL AND LAUDERDALE COUNTY, MS

SUPPLEMENT

By decision served November 3, 2023, the Surface Transportation Board (“Board”) issued Decision 1 in Docket No. FD-36732 embracing CSX Transportation, Inc.’s (“CSXT”) Discontinuance of Trackage Rights. The Board stated that CSXT could not invoke the class exemption procedures at 49 C.F.R. part 1152 to discontinue trackage rights over approximately 51 miles in Marengo and Choctaw Counties, AL and Lauderdale County, MS (the “Line”), because CSXT could not certify that no local traffic had moved over the Line for two years. Meridian & Bigbee Railroad Company (“MNBR”) was providing local service over the same line during that two-year period.¹ The Board noted that it would consider whether to grant an individual exemption, on its own motion, for CSXT’s discontinuance of the trackage rights and invited CSXT to supplement the record in this proceeding. CSXT respectfully requests that the Board grant an individual exemption for the discontinuance of CSXT’s overhead trackage rights

¹ See *Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC—Acquisition and Operation—Certain Rail Line of Meridian & Bigbee Railroad, LLC, in Lauderdale County, Miss, and Choctaw and Marengo Counties, ALA.* STB Docket No. FD-36732 at 7.

between Myrtlewood, AL, and Meridian, MS, and provides the following additional information to support its request.²

ARGUMENT SUPPORTING GRANTING AN INDIVIDUAL EXEMPTION FOR THE DISCONTINUANCE OF CSXT'S TRACKAGE RIGHTS

The Board has jurisdiction over the proposed discontinuance of trackage rights pursuant to 49 U.S.C. §10903. Under 49 U.S.C. §10502, the Board must exempt a transaction from regulation when it finds that:

(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.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress encouraged the Board's predecessor agency to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

² This supplement incorporates the facts from CSXT's October 6, 2023, Notice of Exemption.

H.R. Rep No. 1430, 96 the Cong. 2d Sess. 105 (1980). See also *Exemption From Regulation--Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provision as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

CSXT was granted overhead trackage rights authority in *CSX Transportation, Inc.—Trackage Rights Exemption—Meridian and Bigbee Railroad Company* (STB Docket No. FD 32962) (STB served Jun. 6, 1996). The original purpose of the overhead trackage rights was to allow CSXT to step in and move its own overhead traffic if Meridian & Bigbee Railroad Company (“MNBR”) could not fulfill its commitments under the haulage agreement. CSXT has never operated under the authority granted in STB Docket No. FD 32962.

MNBR currently owns and operates the Line.³ It serves 11 local customers, interchanges traffic with Kansas City Southern Railway Company (“CPKC”) and Norfolk Southern Railway Company at Meridian, MS, and provides haulage for CSXT. Discontinuance of CSXT’s overhead trackage rights would not affect MNBR’s ability to continue providing any of the above services.

A. The Application of 49 U.S.C. §10903 Is Not Necessary to Carry Out the Rail Transportation Policy

Detailed scrutiny under 49 U.S.C. § 10903 of the discontinuance by CSXT is not necessary to carry out the rail transportation policy. An exemption would minimize the

³ If CPKC acquires the Line, CPKC has stated that MNBR would continue to provide local and overhead rail service on the Line post-transaction as it does today.

unnecessary expense associated with the preparation and filing of a formal application or petition and reduce regulatory barriers to exit, result in efficient handling of this proceeding, foster sound economic conditions, and encourage efficient management of railroads. 49 U.S.C. §10101 (2), (7), (15), (5), and (9). Other aspects of the rail transportation policy will not be adversely affected.

B. This Transaction Is Of Limited Scope

The proposed transaction is of limited scope. CSXT seeks to discontinue overhead trackage rights over an approximately 51-mile rail line that CSXT has never operated.

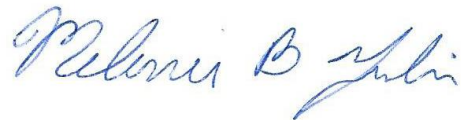
C. This Transaction Will Not Result In An Abuse Of Market Power.

Since the proposed transaction is of limited scope, it is not necessary for the Board to consider whether shippers need to be protected from abuse of market power. However, because CSXT's discontinuance of overhead trackage rights will not impact service and will not affect any shippers on the Line regulation is not needed to protect shippers from the abuse of market power.⁴ CSXT has not operated over the Line under the trackage rights and any shipper can request service from MNBR, a common carrier and owner/operator of the Line.

⁴ CSXT is only permitted to provide overhead service pursuant to the trackage rights. Discontinuance of these never used trackage rights will not reduce competition. Moreover, since CSXT was only granted overhead trackage rights, its abandonment will not adversely affect any local traffic originating or terminating on the Line.

CSXT respectfully requests that the Board grant an individual exemption under 49 U.S.C. 10502(a) on its own motion, authorizing CSXT to discontinue its overhead trackage rights on the Line.⁵

Respectfully submitted,



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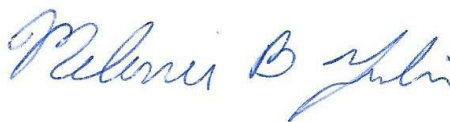
Attorneys for: CSX TRANSPORTATION,
INC.

Dated: November 21, 2023

⁵ Docket No. FD 36732, *Canadian Pacific Kansas City Limited and The Kansas City Southern Railway Company, d/b/a CPKC—Acquisition and Operation—Certain Rail Line of Meridian & Bigbee Railroad, L.L.C. in Lauderdale County, Miss., and Choctaw and Marengo Counties, Ala.*, at 7 (November 3, 2023).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Supplement, in Docket No. AB-55 (Sub-No. 814X) sent via electronic mail to the parties of record on November 21, 2023.

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Melanie B. Yasbin
November 21, 2023