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December 20, 2023

307671

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

ENTERED
Office of Proceedings
December 20, 2023
Part of
Public Record

Re: **Docket No. AB-55 (Sub-No. 794X), CSX Transportation, Inc.—Abandonment
Exemption—in Pinellas County, FL**

Dear Ms. Brown:

By letter filed December 14, 2023, the City of St. Petersburg, Florida, a Municipal Corporation (“St. Petersburg”) filed a Statement of Willingness to Assume Financial Responsibility for an approximately 0.86-mile rail line on CSX Transportation, Inc.’s (“CSXT”) Clearwater Subdivision, between milepost ARE 897.57 and milepost ARE 898.42, in St. Petersburg, Pinellas County (described by St. Petersburg as running between beginning on the south side of 5th Ave N to Dr. Martin Luther King Jr. St. N) (the “Line”).¹ By this letter, and without waiving its rights in connection with its pending appeal of the Surface Transportation Board’s (“Board’s”) November 14, 2023 decision revoking a notice of interim trail use or abandonment (“NITU”) issued to CSXT and Georgetown and High Line Railway Company, LLC (“GHL”), CSXT agrees to negotiate with St. Petersburg toward a possible interim trail use/rail banking arrangement for the Line.

In its November 14 decision, the Board directed CSXT to “explain in detail in any reply agreeing to negotiate” with another trail sponsor “why Ferg’s continued occupation of the Line’s right-of-way would not interfere with trail use or future trail use.” Decision at 9 n.13. As previously explained, “the lease agreement is terminable at will upon 30 days’ notice by CSXT for any reason or no reason at all.” CSXT Reply at 10 n.6 (filed Mar. 28, 2023). The precise interaction between Ferg’s and any potential future trail use cannot be known until St. Petersburg

¹ The St. Petersburg request is responsive to the November 14, 2023 decision, page 8, footnote 9, which provides “the City may submit a renewed request for a NITU authorizing interim trail use/rail banking negotiations between it and CSXT. If CSXT agrees to negotiate, and the Board grants the City’s request, such a decision will allow for continuation of the negotiations referenced in CSXT’s June 15 status report.”

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crystallizes its plans for the trail and enters into a trail use agreement with CSXT. For example, the bar's presence might complement a broader plan by St. Petersburg to develop the downtown area where the right-of-way in a manner that serves fans going to and from Tampa Bay Rays games. In any event, CSXT retains the authority to alter or remove entirely Ferg's occupation of the right-of-way to accommodate whatever form or level of trail use a sponsor determines is best.

As the Board has recognized, "dual use of the right-of-way for trail and non-trail activities is permissible under the Trails Act." Decision at 8–9. The exact contours of any dual use in this situation cannot be known for certain until the negotiations with St. Petersburg conclude, which were ongoing under the prior NITU issued to CSXT and GHL. And until that time, CSXT has chosen not to disrupt Ferg's business unnecessarily. In any event, CSXT continues to maintain that this inquiry is irrelevant. There are only two requirements of the Trails Act: a sponsor's (1) willingness to assume legal and financial responsibility for management of the right-of-way and (2) acknowledgement that use of the right-of-way as a trail is subject to restoration or reconstruction for railroad purposes. GHL satisfied both of those requirements justifying issuance of the now-revoked NITU, and now St. Petersburg has as well. All that is left is for the Board to carry out its ministerial role of issuing the NITU to CSXT and St. Petersburg so that negotiations may continue.

I certify that this letter has been served electronically on all parties of record in this proceeding. This letter is being efiled.

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.