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February 8, 2024
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February 8, 2024

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

Re: Wilmington Terminal Railroad, Limited Partnership
– Operation Exemption –
North Carolina State Ports Authority
Surface Transportation Board Finance Docket 36753

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a Notice of Exemption under 49 U.S.C. § 10902 for the Wilmington Terminal Railroad, Limited Partnership ("WTR") to continue operating on rail lines owned by the North Carolina State Ports Authority.

Included within this notice of exemption is a request to waive the notice requirements of 49 CFR § 1150.42(e).

The filing fee has been paid via pay.gov. If you have any questions related to this filing, please let me know.

Sincerely,

A handwritten signature in blue ink that reads 'Justin J. Marks'.

Justin J. Marks
Counsel to Wilmington Terminal Railroad,
Limited Partnership

FILED
February 8, 2024
SURFACE
TRANSPORTATION BOARD

Enclosure

FEE RECEIVED
February 8, 2024
SURFACE
TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36753

WILMINGTON TERMINAL RAILROAD, LIMITED PARTNERSHIP
–OPERATION EXEMPTION –
NORTH CAROLINA STATE PORTS AUTHORITY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

(includes color images)

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*Attorneys for Wilmington Terminal
Railroad, Limited Partnership*

Dated: February 8, 2024

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36753

WILMINGTON TERMINAL RAILROAD, LIMITED PARTNERSHIP
– OPERATION EXEMPTION –
NORTH CAROLINA STATE PORTS AUTHORITY

VERIFIED NOTICE OF EXEMPTION
UNDER 49 U.S.C. §10902

Wilmington Terminal Railroad, Limited Partnership (“WTR”), a Class III railroad, files this Notice of Exemption under 49 U.S.C. § 10902 to exempt from regulation WTR’s entry into an amendment (“Amendment”) with the North Carolina State Ports Authority (the “NCSPA”) to extend the term of a 2002 Rail Operating Agreement (as amended, the “Original Agreement”) between WTR and NCSPA for WTR to continue to operate as a common carrier over approximately 18 miles of track in three segments (the “Rail Line”). WTR owns a permanent and exclusive railroad operating easement related to the Rail Line. The Rail Line encompasses: (1) the Front Street Spur, extending from the east line of Third Street at CSX Rail Valuation Station 91+37.3 and extending generally in a northerly direction a distance of approximately 0.66 miles to CSX Rail Valuation Station 56+39; (2) the New River Spur, extending from the CSX Rail Valuation Station 0+00, also being Rail Valuation Station 86+20 on the Front Street Spur at the west line of Second Street and extending generally in a southerly direction approximately 3.5 miles to CSX Rail Valuation Station 185+00; and (3) the line extending from the north entrance to the Port of Wilmington at Transit Road, near its intersection with Burnett Blvd., to the south entrance to the Port of Wilmington at River Road near its intersection with

Shipyards Blvd., through and including the classification yards and including all of the railroad tracks on the Port of Wilmington, whether denominated as spurs, side tracks, industrial tracks, or otherwise (but excluding crane rails). Maps of the Rail Line are included as Exhibit A.

WTR entered into the Original Agreement with NCSPA granting WTR a license to operate on the Rail Line and to govern WTR's usage of the railroad facilities.¹ The Original Agreement was entered into with NCSPA at the same time that WTR acquired a permanent and exclusive railroad operating easement from the North Carolina State Ports Authority providing WTR the exclusive and complete right to conduct common carrier rail operations on the Rail Line.² The Amendment will extend the effective date of the Original Agreement beyond the current expiration date, and will amend other commercial terms.

Notice

In accordance with 49 C.F.R. §1150.43, WTR hereby provides the following information:

- (a) The full name and address of Applicant: Wilmington Terminal Railroad, Limited Partnership, 13901 Sutton Park Drive South, Suite 270 Jacksonville, FL 32224.

¹ *Wilmington Terminal Railroad, L.P. – Acquisition and Operation Exemption – North Carolina Ports Railway Commission and North Carolina State Ports Authority*, STB Finance Docket No. 34257 (served Oct. 31, 2002).

² The Original Agreement has been amended three prior times since 2002. It does not appear that Board authority was sought for the three prior amendments; however, WTR has held a continuing common carrier obligation to provide freight service on the line through its acquisition of the permanent and exclusive railroad operating easement. It is not clear that amendments to the Original Agreement require Board authority given that the Original Agreement arguably did not grant WTR any operating rights that require Board authority. The Board described WTR's common carrier obligation that WTR acquired through the permanent and exclusive railroad operating easement in the NCSPA "State of Maine" decision finding that WTR "will continue to have a common carrier obligation [not NCSPA] until we permit that obligation to be transferred to [another] carrier or the [line is] abandoned." See *N. Carolina State Ports Authority – Acquisition Exemption – North Carolina Ports Railway Commission*, STB Finance Docket No. 34258, slip op. at 5 (served Oct. 31, 2002). WTR is seeking authority for this Amendment in an abundance of caution in the event that the Board were to determine that its authority is necessary.

(b) Applicant's Representatives:

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(c) WTR has entered into the Amendment with NCSPA to extend the term of the Original Agreement and amend other commercial terms related to WTR's operations over the Rail Line.

(d) WTR currently owns a permanent and exclusive railroad operating easement for, and operates, the Rail Line.

(e) Brief Summary of the Proposed Transaction: WTR has owned the permanent and exclusive railroad operating easement for the Rail Line and operated pursuant to the Original Agreement since 2002. WTR and NCSPA have decided to extend the term of the Original Agreement and make other commercial changes.

(1) The owner of the tracks is the North Carolina State Ports Authority. The name and address of NCSPA is 2202 Burnett Boulevard, Wilmington, NC 28401. WTR is the owner of the permanent and exclusive railroad operating easement for the Rail Line. The name and address of WTR is set forth in subparagraph (a) above.

(2) The Amendment will be effective upon the effective date of this Notice of

Exemption, thirty days after filing (or upon the grant of the requested labor notice waiver).

- (3) The mileposts of the Rail Line are: (1) the Front Street Spur, extending from the east line of Third Street at CSX Rail Valuation Station 91+37.3 and extending generally in a northerly direction a distance of approximately 0.66 miles to CSX Rail Valuation Station 56+39; (2) the New River Spur, extending from the CSX Rail Valuation Station 0+00, also being Rail Valuation Station 86+20 on the Front Street Spur at the west line of Second Street and extending generally in a southerly direction approximately 3.5 miles to CSX Rail Valuation Station 185+00; and (3) the line extending from the north entrance to the Port of Wilmington at Transit Road, near its intersection with Burnett Blvd., to the south entrance to the Port of Wilmington at River Road near its intersection with Shipyard Blvd., through and including the classification yards and including all of the railroad tracks on the Port of Wilmington, whether denominated as spurs, side tracks, industrial tracks, or otherwise (but excluding crane rails).
- (4) The total distance of the Rail Line is approximately 18 miles of track.
- (f) Attached as Exhibit A to this Notice of Exemption are maps of the Rail Line.
- (g) WTR certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier.
- (h) WTR certifies that neither the Original Agreement nor the Amendment include an interchange commitment.
- (i) In addition to the information set forth above, WTR certifies that its revenues currently exceed \$5,000,000. However, no employees will be affected by the transaction

because WTR is the current operator and has been the operator since before 2002. WTR is therefore requesting a waiver of the labor notice requirements under 49 C.F.R. §1150.42(e). See request for waiver set forth below.

Labor Protection

WTR is a Class III carrier and pursuant to 49 U.S.C. §10902(d), approval of this transaction may not be subjected to labor protection conditions. Additionally, since WTR is the current owner of the railroad operating easement and operator of the Rail Line, no employees will be adversely affected by the transaction.

Environmental and Historic Reports

WTR is the owner of the railroad operating easement and will continue as the owner. The Amendment merely extends the term of the Original Agreement, changes some commercial terms, and provides for continued rail operations that will not result in operational changes that will exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Further Board approval is required for WTR to abandon or discontinue service on the Rail Line given its ownership of the railroad operating easement. Because WTR does not own the tracks comprising the Rail Line or the underlying property, it has no authority to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. Accordingly, no environmental or historic documentation is required. *See* 49 C.F.R. §1105.6(c)(2); 49 C.F.R. §1105.8(b)(1).

Caption Summary

Attached hereto as Exhibit B is the caption summary required by 49 C.F.R. §1150.44.

Request for Waiver of Notice Requirements of 49 C.F.R. §1150.42(e)

As noted above, WTR's total revenues exceed \$5,000,000. Under the Board's regulations at 49 C.F.R. §1150.42(e), WTR would be required to give sixty days' notice to

employees working on the Rail Line (and the national offices of their collective bargaining representatives). However, the Board has held: “The purpose of 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.” *Louisiana & Delta Railroad, Inc. – Lease Amendment and Operation Exemption – Union Pacific Railroad Company*, STB Finance Docket No. 36379, slip op. at 2 (served Mar. 4, 2020). *See also Acquisition of Leased Lines under 49 USC 10901 and 10902 – Advance Notice of Proposed Transactions (“Advanced Notice of Proposed Transactions”)*, 2 STB 592 (1997). In adopting the notice requirement, the Board specifically recognized that “exceptional situations may occur necessitating acquirer requests for waiver of the 60 day notice provision ...” *Advanced Notice of Proposed Transactions, supra* at 601.

In this instance, WTR should not be required to comply with the requirements of Section 1150.42(e) because there will be no changes for any employees working on the Rail Line. WTR already operates the Rail Line and has been the sole operator providing local service over the Rail Line since at least 2002. The Amendment extends the Original Agreement. Under the Amendment and the railroad operating easement owned by WTR, WTR will continue to be the sole (common carrier) operator of the Rail Line. NCSPA does not have any common carrier obligation related to the Rail Line or conduct rail operations, and therefore it has no railroad employees who will be affected or have to make any career choices as a result this transaction. Posting notices on the Rail Line would not provide notice to any NCSPA railroad employees since there are none. Thus, under the circumstances of this transaction, compliance with the notice requirements will not further the purposes of the rule and should be waived. Granting WTR a waiver would be consistent with other circumstances in which the Board has granted

waivers from the labor notice requirements when a common carrier has filed to extend the term of its operation of a line it was previously operating. *See Savannah Port Terminal Railroad, Inc. Operation Exemption – Georgia Ports Authority*, STB Finance Docket No. 36558 (served Dec. 27, 2021). *See also Louisiana Southern Railroad, LLC – Lease Exemption containing Interchange Commitment – The Kansas City Southern Railway Company*, STB Docket No. FD 35983 (served Feb. 18, 2016). WTR asks that the waiver of the labor notice requirements be granted expeditiously so that this Notice of Exemption can become effective as scheduled 30 days after it is filed.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Conclusion

Accordingly, WTR requests that the Board issue a notice allowing the Amendment to become effective 30 days after the date that WTR files this notice of exemption.

Respectfully submitted,



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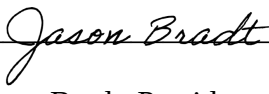
*Attorneys for Wilmington Terminal Railroad,
Limited Partnership*

Dated: February 8, 2024

VERIFICATION

I hereby verify on behalf of Wilmington Terminal Railroad, Limited Partnership, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on February _8_, 2024.

_____

Jason Bradt, President

EXHIBIT A

MAPS



 **WTRY** Wilmington Terminal Railroad, Limited Partnership

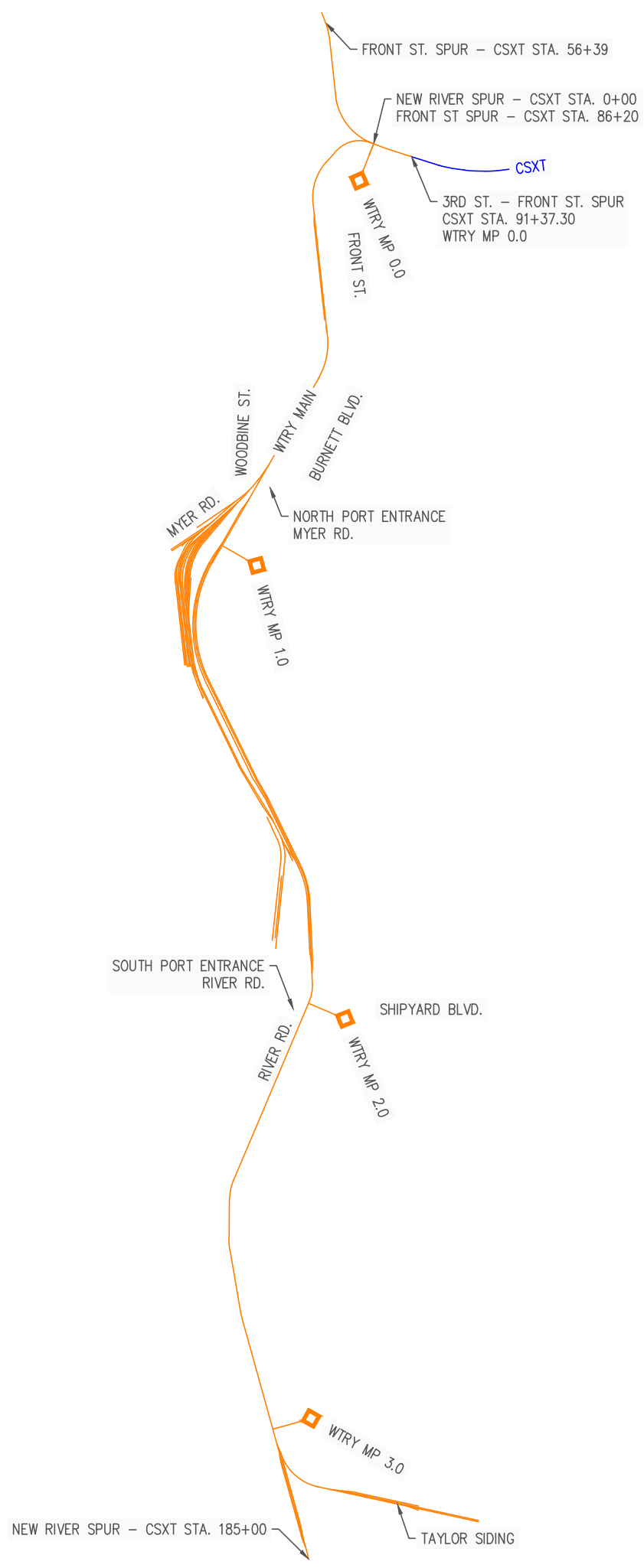


EXHIBIT B

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Docket No. FD 36753

**WILMINGTON TERMINAL RAILROAD, LIMITED PARTNERSHIP
– OPERATION EXEMPTION –
NORTH CAROLINA STATE PORTS AUTHORITY**

VERIFIED NOTICE OF EXEMPTION

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tracks on the Port of Wilmington, whether denominated as spurs, side tracks, industrial tracks, or otherwise (but excluding crane rails).

Comments must be filed with the Board and served on WTR's representative, Justin Marks, Esq., Clark Hill, 1001 Pennsylvania Ave. N.W., Suite 1300 South, Washington, DC 20004, (202) 772-0916, jmarks@clarkhill.com.

The Notice is filed under 49 C.F.R. §1150.41. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Board decisions and notices are available at www.stb.gov.

Decided: March __, 2024.

By the Board, Mai T. Dinh, Director, Office of Proceedings.