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Office of Proceedings
May 7, 2024
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May 7, 2024

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

Re: CG Railway, LLC—Operation Exemption—Rail Ferry Service
STB Finance Docket No. 36775

Dear Ms. Brown:

Enclosed for filing in the above referenced docket, is a notice of exemption filed on behalf of CG Railway, LLC ("CGR") pursuant to 49 C.F.R. § 1150.41. Included within this notice of exemption is a partial waiver request of the advance employee notice requirements of 49 C.F.R. § 1150.42(e).

This filing is a result of questions presented by the Board in its April 4, 2024, decision in Finance Docket No. 36701, therefore CGR is also filing a copy of the enclosed notice in that docket and is providing a copy to all parties of record in FD 36701.

The filing fee has been submitted via pay.gov. If there are any questions related to this filing, please contact me.

Sincerely,

FILED

Justin J. Marks
Counsel to CG Railway, LLC

May 7, 2024
SURFACE
TRANSPORTATION BOARD

Enclosure

cc: All parties of record in Finance Docket No. 36701.

FEE RECEIVED

May 7, 2024
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36701

**GMÉXICO TRANSPORTES, S.A.B. DE C.V.
—ACQUISITION OF CONTROL EXEMPTION—CG RAILWAY, LLC**

DOCKET NO. FD 36775

**CG RAILWAY, LLC
—OPERATION EXEMPTION—RAIL FERRY SERVICE**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41 ET SEQ.**

(color image included)

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(215) 640-8523
ehocky@clarkhill.com

Justin J. Marks
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jmarks@clarkhill.com

Attorneys for CG Railway, LLC

Dated: May 7, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36701

**GMÉXICO TRANSPORTES, S.A.B. DE C.V.
—ACQUISITION OF CONTROL EXEMPTION—CG RAILWAY, LLC**

DOCKET NO. FD 36775

**CG RAILWAY, LLC
—OPERATION EXEMPTION—RAIL FERRY SERVICE**

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1150.41 ET SEQ.**

Pursuant to the Board’s regulations at 49 C.F.R. § 1150.41 *et seq.*, CG Railway, LLC (“CGR”),¹ a Class III carrier, files this Verified Notice of Exemption (“Verified Notice”) from the prior approval requirements of 49 U.S.C. § 10902 to seek after-the-fact authority for the operation of a rail-ferry service between the Port of Mobile, Alabama in the United States and the U.S. maritime boundary line in the Gulf of Mexico. CGR provides a rail ferry service between the Port of Mobile and the Port of Coatzacoalcos, Veracruz in Mexico.

¹ CGR was first incorporated as Central Gulf Railway, Inc. The entity’s name has since changed twice—first to CG Railway, Inc. and then to CG Railway, LLC.

BACKGROUND

In a decision served in Docket No. FD 36701, the Board rejected a petition for exemption for GMéxico Transportes, S.A.B. de C.V. (“GMXT”) to acquire an indirect controlling ownership interest in CGR.² In that decision, the Board, among other things, directed CGR to indicate whether it ever received Board authority to operate the rail car ferry service and, if not, to seek after-the-fact authority or explain why it believes authorization is not needed. This Verified Notice responds to the Board’s decision and seeks after-the-fact authority for CGR to operate its rail ferry service.

CGR began its rail ferry service in 2001 out of the Port of Mobile after receiving Board authorization for the lease and operation of certain tracks from the Terminal Railway Alabama State Docks (“TASD”) in Mobile, AL.³ Except for a short period when the rail ferry service was operated out of the Port of New Orleans,⁴ CGR’s rail ferry service has been conducted between the Port of Mobile and the Port of Coatzacoalcas. CGR’s rail operations in Mobile are currently conducted pursuant to a lease from TASD.⁵

Despite having sought and obtained Board authorization for its operations of track within the Port of Mobile, CGR’s prior notices of exemption did not specifically request, and thus CGR

² Decision, Docket No. FD 36701 (STB served Apr. 4, 2024).

³ See *Cent. Gulf Ry.—Lease and Operation Exemption—Terminal Ry. Ala. State Docks*, Docket No. FD 33891 (STB served July 6, 2000).

⁴ See *CG Ry.—Lease and Operation Exemption—Port of New Orleans, La.*, Docket No. FD 34710 (STB served July 1, 2005). In the course of reviewing CGR’s prior Board authorizations, CGR determined that it should have obtained discontinuance authority, as it no longer conducts operations in New Orleans. CGR will seek such authority in a separate docket.

⁵ See *CG Ry.—Lease and Operation Exemption— Terminal Ry. Ala. State Docks*, Docket No. FD 35009 (STB served Apr. 12, 2007) (authorizing lease and operation of 0.583 miles of rail line).

did not receive, authorization for operation of the rail ferry service itself. CGR is now seeking after-the-fact authority for operation of the rail ferry service between the Port of Mobile and the U.S. maritime boundary line in the Gulf of Mexico.⁶

A verified notice of exemption pursuant to 49 C.F.R. § 1150.41 from the prior approval requirements of 49 U.S.C. § 10902 is appropriate in this case. CGR is a Class III rail carrier seeking authority to operate. *See* 49 U.S.C. § 10902(a) (a “Class III rail carrier providing transportation subject to the jurisdiction of the Board under this part may . . . operate an extended or additional rail line under this section”); 49 U.S.C. § 10102(6) (“railroad” includes a “ferry . . . used by or in connection with a railroad”). The Board has previously authorized transactions involving car float or rail ferry operations via the class exemptions.⁷

The Board has also customarily granted after-the-fact class exemptions when, upon learning of the need for regulatory approval, applicants have sought such approval or exemption from approval.⁸

⁶ The Board observed that its jurisdiction under 49 U.S.C. § 10501(a)(2) “applies only to transportation in the United States,” but that jurisdiction “encompasses transportation that takes place in, under, or over U.S. waters.” Decision, Docket No. FD 36701, at 4. As such, CGR is not seeking authorization for the entirety of its rail ferry operation, but only that portion of the service which takes place over U.S. waters.

⁷ *See, e.g., New York New Jersey Rail LLC and New York Cross Harbor R.R. Terminal Corp.—Corporate Family Transaction Exemption*, Docket No. FD 34813 (STB served July 27, 2006) (authorizing transfer of operating rights and common carrier obligations concerning a car float operation across New York Harbor); *CSX Transp., Inc.—Aban. Exemption—in St. Clair Cnty., Mich.*, Docket No. AB 55 (Sub-No. 510X) (ICC served July 14, 1995) (authorizing through exemption the abandonment of a rail car float operation between Michigan and the U.S.-Canada boundary line).

⁸ *See, e.g., Red River Valley & W. R.R.—Acquisition & Operation Exemption—Rail Line of BNSF Ry.*, Docket No. FD 36719 (STB served Sept. 8, 2023) (authorizing operation of a rail line by a Class III rail carrier that had inadvertently operated for 17 years before seeking after-the-fact authorization); *Adrian & Blissfield Rail Road Co.—Acquisition & Operation Exemption—Tecumseh Branch Connecting R.R.*, Docket No. FD 35035 (STB served October 23, 2009)

In support of this Verified Notice, CGR submits the following information required by 49

C.F.R. § 1150.43:

1150.43(a) *The full name and address of the Class III rail carrier applicant*

CG Railway, LLC
13901 Sutton Park Drive South
Suite 175C
Jacksonville, FL 32224

1150.43(b) *The name, address, and telephone number of the representative of the applicant who should receive correspondence*

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
(215) 640-8523
ehocky@clarkhill.com

Justin J. Marks
Clark Hill PLC
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Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

1150.43(c) *A statement that an agreement has been reached or details about when an agreement will be reached*

CGR operates track in the Port of Mobile and its rail ferry service from the Port of Mobile pursuant to a Master Agreement between CGR, the Alabama State Port Authority, and TASD.

(authorizing rail line acquisition that was part of a corporate restructuring 8 years after the transaction was completed).

The Master Agreement and its addenda were attached as Exhibit C to the petition for exemption filed in Docket No. FD 36701 on January 8, 2024.

1150.43(d) *The operator of the property*

CGR is the common carrier railroad responsible for the operation of the rail ferry service.⁹

1150.43(e) *A brief summary of the transaction*

As described above, CGR has filed this Verified Notice from the prior approval requirements of § 10902 to seek after-the-fact authority for operation of a rail-ferry service between the Port of Mobile, Alabama in the United States and the U.S. maritime boundary line in the Gulf of Mexico. CGR’s rail ferry service operates between the Port of Mobile and the Port of Coatzacoalcas, Veracruz in Mexico. Once authorized pursuant to this Verified Notice, the rail ferry service will continue to be operated in the same manner as it is today.

1150.43(e)(1) *The name and address of the railroad transferring the subject property to the Class III rail carrier applicant*

Not applicable.

⁹ CGR holds itself out as the common carrier for the rail ferry service and is responsible for all commercial activities in support of the rail ferry service. CGR charters two rail ferry vessels—the “Cherokee” and the “Mayan”—which are owned by Rail Ferry Newbuild I and Rail Ferry Newbuild II, respectively. Seabulk Fleet Management LLC crews and physically operates the vessels pursuant to standard ship management agreements with Rail Ferry Newbuild I and Rail Ferry Newbuild II. CGR is owned by a Delaware limited liability company that is indirectly owned 50/50 by Genesee & Wyoming Inc. and SEACOR Holdings, Inc. Rail Ferry Newbuild I and Rail Ferry Newbuild II are subsidiaries of a Marshall Islands limited liability company that is also indirectly owned 50/50 by Genesee & Wyoming, Inc. and SEACOR Holdings Inc. Seabulk Fleet Management LLC is an independent manager and subsidiary of SEACOR Holdings Inc.

1150.43(e)(2) *The proposed time schedule for consummation of the transaction*

CGR is not requesting retroactive operating authority because CGR is aware that the Board generally disfavors retroactive grants of authority.¹⁰ As such, CGR understands that its operating authority will take effect upon the effective date of this notice of exemption.

1150.43(e)(3) *The mileposts of the subject property, including any branch lines*

CGR's rail ferry service is a water-based operation in the Gulf of Mexico and as such there are no applicable mileposts or branch lines.

1150.43(e)(4) *The total route miles being acquired*

The portion of CGR's rail ferry route that operates in U.S. waters consists of approximately 43.32 nautical miles from the Port of Mobile to the U.S. maritime boundary line in the Gulf of Mexico.¹¹

1150.43(f) *A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states*

A map depicting the rail ferry route is attached as Exhibit A.

1150.43(g) *A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under § 1150.45.*

A certificate of compliance with the requirements of 49 C.F.R. § 1150.43(g) is attached as Exhibit B to this Verified Notice.

¹⁰ E.g., *Ark.-Okla. R.R.—Acquisition & Operation Exemption—Oklahoma*, Docket No. FD 36323, at 3 (STB served Sept. 19, 2019).

¹¹ This 43.32-nautical mile portion of the ferry route consists of inland waterways and the U.S. territorial sea. CGR's entire rail-ferry route consists of approximately 830 nautical miles across the Gulf of Mexico between the Port of Mobile and the Port of Coatzacoalcos.

1150.43(h)(1) *Interchange Commitments*

CGR hereby certifies that the operation of the rail ferry service does not involve a provision or agreement limiting future interchange with a third-party connecting carrier.

1150.42(e) *Employee Notice*

The Verified Notice seeks after-the-fact authority for operation of the rail ferry service, which CGR has provided for over 20 years. As such, the proposed transaction will not result in any change in operations or transfer, reduction, or expansion of employees. Nevertheless, because CGR's annual revenues exceed, and are expected to continue to exceed, \$5 million, CGR has emailed to the employees and posted a notice of the proposed transaction subject to this Verified Notice at the workplace of CGR employees pursuant to 49 C.F.R. § 1150.42(e). A copy of that notice is being filed concurrently with this Verified Notice and is also attached at Exhibit C. None of CGR's employees are represented by a union.

Under § 1150.42(e), the advance employee notice must be posted and certified to the Board at least 60 days before the exemption becomes effective. However, because the Board's decision in Docket No. FD 36701 directed CGR to either seek after-the-fact authority or explain why it believes authorization is not necessary by May 9, 2024, CGR was unable to post the employee notice 30 days prior to filing the Verified Notice and is instead filing its advance notice concurrently. CGR believes that a partial waiver of the 60-day period would be appropriate in these circumstances, consistent with prior Board precedent,¹² but is not specifically seeking such

¹² See, e.g., *Red River Valley & Western Railroad—Acquisition & Operation Exemption—Rail Line of BNSF Railway*, Docket No. FD 36719 (STB served Sept. 21, 2023) (waiving 60-day advance notice requirement where applicant sought after-the-fact authority and no operational changes would result).

a waiver. As such, CGR understands that the notice of exemption in this case would not be effective until 60 days after filing rather than the typical 30 days.

1105 *Environmental and Historic Impacts*

This Verified Notice seeks after-the-fact authority for CGR's operation of a rail-ferry service between the Port of Mobile and the U.S. maritime boundary line in the Gulf of Mexico. Once authorized pursuant to this Verified Notice, the rail ferry service will continue to be operated in the same manner as it is today.

Pursuant to 49 C.F.R. § 1105.6(c)(1)(i), the proposed transaction is exempt from environmental review because the rail ferry operation proposed herein will not cause any operating changes that exceed the thresholds established in § 1105.7(e)(4) or (5).

With respect to § 1105.7(e)(4), the rail ferry operation will not cause a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year to motor carriage.¹³

With respect to § 1105.7(e)(5), the rail ferry operation will not result in an increase in rail traffic of at least eight trains a day.¹⁴ Although the rail ferry operation involves transporting rail cars via vessels rather than "trains," CGR's operations do not come close to meeting this threshold. CGR currently operates two ferry vessels, each of which has a capacity of approximately 135 rail cars. Generally, a vessel departs each port every four to five days. In 2023, CGR handled approximately 6,747 carloads, which would equate to approximately 18 carloads per day.

¹³ 49 C.F.R. § 1105.7(e)(4)(iv).

¹⁴ To the extent the Board compares current operations against a pre-authorization baseline of zero, the 100 percent increase threshold is not applicable. *See Missouri Central—Acquisition & Operation Exemption—Lines of Union Pacific*, 4 S.T.B. 391, 397 (1999) ("it is inappropriate to apply a percentage increase to a base of zero"), *aff'd sub nom. Lee's Summit, Mo. v. STB*, 231 F.3d 39 (D.C. Cir. 2000).

Nor will the rail ferry operation result in an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. *See id.* § 1105.7(e)(5)(i). CGR does not currently transport ozone depleting materials over the rail-ferry service route, nor is such transportation contemplated. 49 C.F.R. § 1105.7(e)(5)(iii). Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(1)(i).

CGR is not proposing an action that requires a historic report under 49 C.F.R. § 1105.8(a). Operation of the rail ferry service is for the purpose of continued rail operations where further STB approval would be required to discontinue the rail ferry service, and CGR has no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older. Accordingly, under 49 C.F.R. § 1105.8(b)(1), this Verified Notice does not require a historic report.

* * *

For the foregoing reasons, CGR respectfully requests that the Board publish the Verified Notice.

Respectfully submitted,



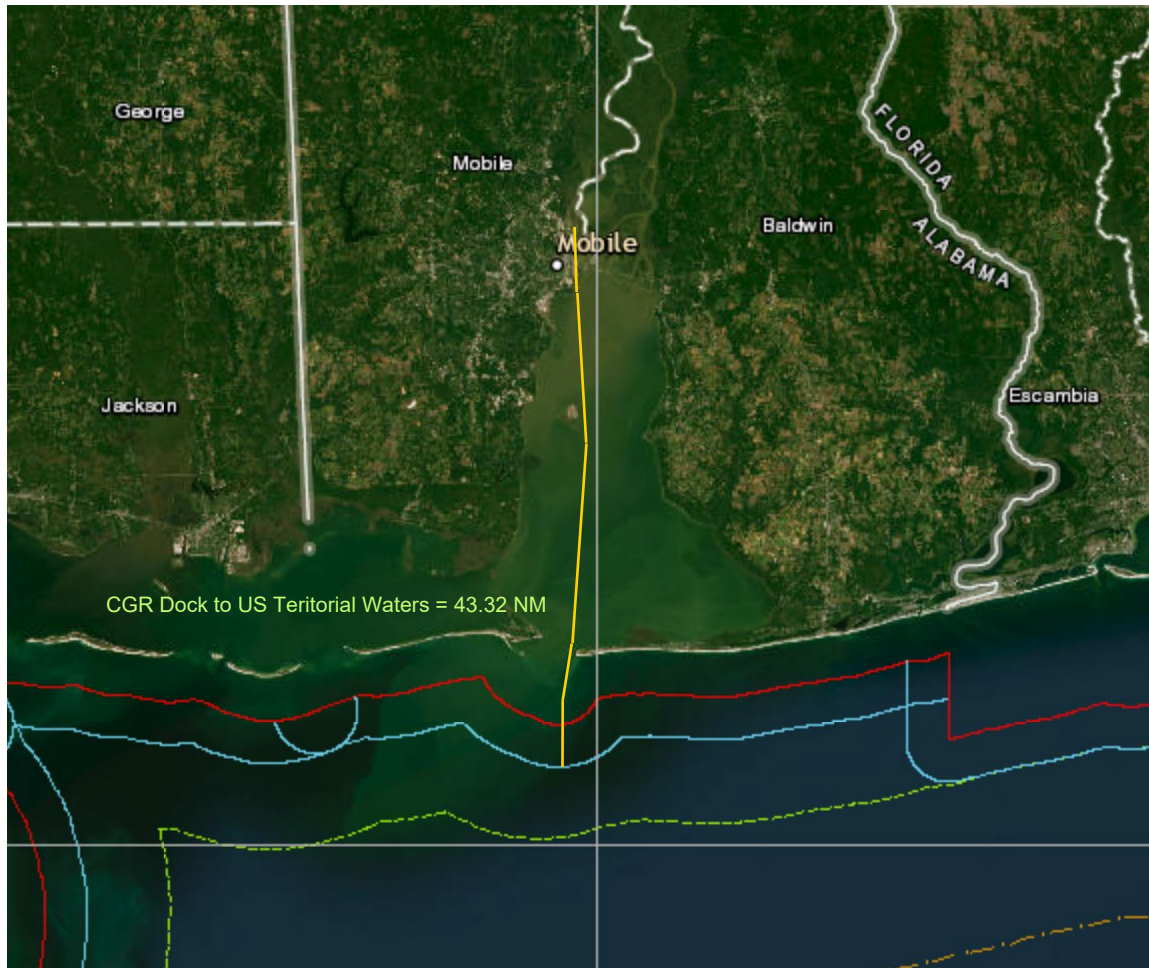
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(202) 772-0916
jmarks@clarkhill.com

Attorneys for CG Railway, LLC

Dated May 7, 2024

EXHIBIT A: MAP (1150.43(F))



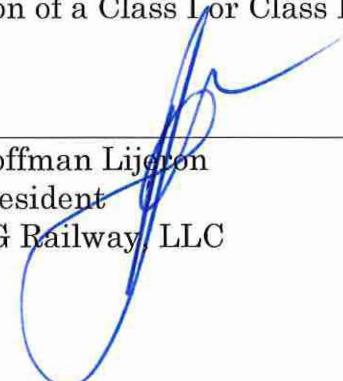
From CGR dock to closest point of US Territorial waters is 43.32 Nautical Miles

From CGR dock Mobile to CGR Dock Coatzacoalcos is 835 NM, straight course, without deviations.

Source: NOAA.gov

Exhibit B: Certificate of Compliance (1150.43(g))

I, Hoffman Lijeron, President of CG Railway, LLC, hereby certify that the projected annual rail revenues of CG Railway, LLC, as a result of the rail ferry service proposed herein, will not result in the creation of a Class I or Class II rail carrier.



Hoffman Lijeron
President
CG Railway, LLC

Dated: May 7, 2024

EXHIBIT C: EMPLOYEE NOTICE (1150.42(E))



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F (202) 772-0919

May 7, 2024

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

Re: Docket No. FD 36775, *CG Railway, LLC—Operation Exemption—Rail Ferry Service*

Dear Ms. Brown:

Pursuant to 49 C.F.R. § 1150.42(e), CG Railway, LLC ("CGR") hereby certifies that, on May 7, 2024, the attached notice was emailed to employees and/or posted at the following workplaces of CGR employees:

13901 Sutton Park Drive South
Suite 175C
Jacksonville, FL 32224

2016 Alabama State Docks Blvd.
Mobile, AL 36602

CGR employees are not represented by any labor union.

If you have any questions regarding this filing, please feel free to contact me.

Sincerely,

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

Justin J. Marks
Counsel for CG Railway, LLC

Enclosure

CG RAILWAY, LLC
13901 Sutton Park Drive South
Suite 175C
Jacksonville, FL 32224

Notice

Pursuant to regulations of the Surface Transportation Board ("STB") at 49 C.F.R. § 1150.42(e), CG Railway, LLC ("CGR"), a Class III rail carrier, hereby gives notice to its employees that, on or about May 7, 2024, CGR intends to file a verified notice of exemption for after-the-fact authority to continue operation of its rail ferry service between the Port of Mobile and the U.S. marine boundary for a distance of approximately 41 nautical miles.

CGR currently operates its rail ferry service between the Port of Mobile, Alabama and the Port of Coatzacoalcas, Veracruz in Mexico. CGR will continue to operate the rail ferry service following STB authorization. The proposed transaction will not result in any change in operations, and no CGR employees will be dismissed or displaced as a result of the transaction.

A verified notice of exemption to authorize the operation of the rail ferry service will be filed with the STB on or shortly after May 7, 2024, in Docket No. FD 36775. Following authorization of the rail ferry operations, CGR will continue to be a Class III rail carrier.

CGR does not expect to hire any additional employees as a result of the proposed transaction because the rail ferry service will continue to be operated post-authorization as it is today. Employees desiring further information regarding the verified notice of exemption may contact Hoffman Lijeron, Hlijeron@cgrailway.com.

5/7/2024

EXHIBIT D: CAPTION SUMMARY (1150.44)

**SURFACE TRANSPORTATION BOARD
NOTICE OF EXEMPTION
DOCKET NO. FD 36775
CG RAILWAY, LLC
—OPERATION EXEMPTION—RAIL FERRY SERVICE**

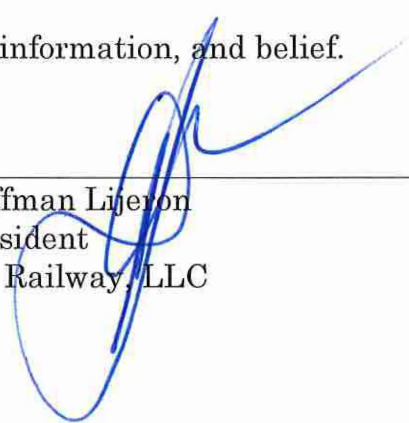
CG Railway, LLC (“CGR”) has filed a verified notice of exemption to operate a rail ferry service over a route of approximately 43.32 nautical miles between the Port of Mobile, Alabama in the United States and the U.S. maritime boundary line.

Comments must be filed with the Board and served on CGR’s representative, Eric M. Hocky, 2001 Market Street, Suite 2620, Philadelphia, PA 19103; telephone: (215) 640-8523; email: ehocky@clarkhillcom.

This notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

Verification

I, Hoffman Lijeron, state that I am the President of CG Railway, LLC and that I am duly authorized to execute, verify, and file this Verified Notice of Exemption. I have knowledge of the matters contained herein, and the statements made herein are true and correct to the best of my knowledge, information, and belief.



Hoffman Lijeron
President
CG Railway, LLC

Dated: May 7, 2024

CERTIFICATE OF SERVICE

I hereby certify that, on this 7th day of May, 2024, the foregoing filing was served by email or first-class mail on all parties of record on the service list for Docket No. FD 36701.



Justin J. Marks



Justin J. Marks
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Email:jmarks@ClarkHill.com

Clark Hill
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F (202) 772-0919

May 7, 2024

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

Re: Docket No. FD 36775, *CG Railway, LLC—Operation Exemption—Rail Ferry Service*

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Jacksonville, FL 32224

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Mobile, AL 36602

CGR employees are not represented by any labor union.

If you have any questions regarding this filing, please feel free to contact me.

Sincerely,

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

Justin J. Marks
Counsel for CG Railway, LLC

Enclosure

CG RAILWAY, LLC
13901 Sutton Park Drive South
Suite 175C
Jacksonville, FL 32224

Notice

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5/7/2024