

BEFORE THE
SURFACE TRANSPORTATION BOARDENTERED
Office of Chief Counsel
April 1, 2026
Part of
Public Record

DOCKET NO. FD 36909

TRANSLOADX RAILROAD COMPANY, INC. – ACQUISITION AND OPERATION
EXEMPTION — CSX TRANSPORTATION, INC.

VERIFIED REPLY TO PETITION FOR STAY

Pursuant to 49 C.F.R. §1115.5 and the decision of the Surface Transportation Board (“Board”) served on March 30, 2026, TransloadX Railroad Company, Inc., (“TransloadX-RR”) hereby replies to the Petition for Stay filed by Charles Hardenbergh, a self-described “former rail journalist” and alleged “interested member of the public” on March 27, 2026 (“Petition”).

This straightforward proceeding involves the lease of two railroad lines in Maine by TransloadX-RR, which was created to be the Class III operator of the lines. The proposed transaction does not involve the operations of TransloadX (a separate company owned by the principals of TransloadX-RR) in Framingham, Massachusetts, the basis of Petitioner’s Petition. Petitioner has no direct ties to or interests in either of the rail lines being leased by TransloadX-RR, or TransloadX’s operations in Massachusetts. Rather, he says only that he travels and “observes existing and former rail sidings” in Maine. Petition at 4.

Petitioner nevertheless asks the Board to stay the effective date of the Notice of Exemption in this docket pending resolution of his “Petition to Revoke,” which is set forth in the

same document he filed on March 27, 2026. However, as the Board pointed out in its March 30 decision, there is presently nothing to “revoke” since the exemption authority has not yet become effective pursuant to Board procedures. As such, the petition to “revoke” is “more appropriately characterized as a request to reject the verified notice.” March 30 Decision at 2. TransloadX-RR will separately reply to that aspect of Petitioner’s filing on or before April 16, 2026.

For the reasons set forth below, the Petition to Stay is meritless and cannot meet any of the Board’s four standards required for granting a stay.

I. **Background**¹

Between May 2025 and December 2025 TransloadX-RR negotiated the terms of a letter of intent whereby TransloadX-RR would negotiate a lease for two branch lines located in Penobscot and Kennebec counties in Maine. (the “Maine Lines”). The purpose of leasing the Maine Lines is to develop traffic on these branch lines by working with former railroad customers and developing new online business through transloading and economic development in concert with local economic development offices in each of the cities and towns located adjacent to the rail lines. TransloadX-RR filed its Notice of Exemption in this docket on March 17, 2026 for exemption authority to lease and operate the Maine Lines. Under the Board’s rules the Notice will go into effect on April 16, 2026 unless stayed.

Petitioner bases his request for the Board to stay the effective date of the exemption, and his opposition to the lease transaction generally, on three general assertions, none of which relate to the Maine Lines. First, he claims that stay is necessary because TransloadX is allegedly currently operating without a “municipal permit” and violating a “cease and desist” order from the

¹ The factual statements in this Reply are Verified by Mr. John P. DeWaele, President of TransloadX-RR.

City of Framingham, where TransloadX leases five acres of a 40-acre rail yard and property for transload operations.² Petition at 3-4. Both assertions are false and easily disproven by Petitioner’s own exhibits. Notwithstanding the anonymous document dated February 7, 2026 (Exh. C, PDF page 46) and the December 10, 2025 letter expressing the views of a Framingham City Councilor opposed to TransloadX’s operations in Framingham, Petitioner produces no actual evidence supporting his critical assertions that (1) TransloadX is required to have a “municipal permit” to operate the transload facility in Framingham; and (2) a “cease and desist” order has been issued against TransloadX by the City of Framingham. Rather, Petitioner’s own exhibit only includes a letter directed to another entity based on dumpster storage, not TransloadX’s transloading operations nor on property controlled by TransloadX. Petition Exhibit C, PDF pages 49-50.

Second, Petitioner claims that the exemption effective date should be stayed because it his personal view that when TransloadX-RR receives exemption authority to lease and operate the Maine Lines as a Class III rail carrier TransloadX-RR will then “immediately” assert that §10501(b) preempts all state and local laws applicable to TransloadX’s transloading operations in *Massachusetts*. Petition at 5. Leaving aside whether TransloadX-RR could accomplish that result under applicable law governing preemption and rail carriers subject to the Board’s jurisdiction,³ Petitioner again provides no evidence demonstrating his personal speculative theory

² TransloadX transloads a variety of commodities including construction and building materials and aggregates from railcars to trucks at this location. The commodities do not include solid waste.

³ Contrary to Petitioner’s suggestion, non-rail carriers can assert federal preemption with respect to transloading operations in certain instances. *See Town of Smithtown, N.Y., Pet. For Dec. Order*, F.D. 36575 (Sub-No. 1) (STB Feb. 22, 2024) (“[T]he Board’s jurisdiction extends to rail-related activities that take place at transload facilities if the activities are offered by a rail carrier, either directly or through its agent, or if a rail carrier exerts control over a third-party’s operations.”) (emphasis added).

has any validity whatsoever. Nor does he assert that such evidence would be produced if the Board stayed the effective date of the exemption. In point of fact, TransloadX-RR has no such plans. Rather, it intends to develop and operate the Maine Lines separately from its transload operations in Framingham.

Third, Petitioner argues that the exemption to lease and operate the Maine Lines should not be permitted to go into effect because of court rulings against the principals of TransloadX-RR in litigation in Massachusetts involving different transactions, facts and circumstances. As to those cases, the first describes a highly contentious, fact intensive business dispute commenced in 2023 over the enforceability of a right of first refusal (“ROFR”) to acquire the Grafton and Upton Railroad that dated back to 2009. In that case, the court concluded from the facts presented to it that the principals of TransloadX-RR could not exercise their rights to acquire the railroad pursuant to a letter of intent because of the pre-existing ROFR contained in an earlier letter of intent.⁴ PDF at 19-20. TransloadX-RR’s principals disagreed with some of the court’s other factual conclusions and *dicta*, but they did not appeal the ruling. It is noteworthy that the Massachusetts court decision Petitioner has attached to his Petition was only made available to the parties to that litigation and not available on the public docket. This raises questions about whether Petitioner is truly simply an “interested member of the public” or if he is acting in concert with one or more of the litigants in the Massachusetts cases who continue to pursue their issues with TransloadX-RR’s principals.

The second ruling attached to the Petition speaks for itself, and the principals of

⁴ To provide additional context to the Board as to the nature of the litigation, the Court stated it was “troubled that [the holder of the ROFR] seems to have made sworn statements to the STB that are directly contrary to his assertions in this case, and are directly contrary to the plain meaning of the Dana LOI signed in early 2009.” Decision at 9.

TransloadX-RR strongly disagree with the Court's conclusions of fact and law and regret the court's final ruling. Despite this disagreement, TransloadX-RR's principals timely complied with the Court's order by paying approximately \$32,000 in attorneys' fees and costs awarded by the Court. As set forth below, however, the assertions by Petitioner concerning his interpretation of the decisions in these cases provide no basis for the Board to stay the effective date of the exemption.

II. Petitioner Has Failed to Meet any of the Board's Criteria for Granting a Stay

The Board's rules governing whether to grant a request to stay an aspect of a proceeding are clear and straightforward:

Under 49 U.S.C. § 1321(b)(4), the Board may issue an appropriate order, such as a stay, when necessary to prevent irreparable harm. In ruling on a petition for stay, the Board considers: (1) whether the party seeking the stay has made a strong showing that it is likely to prevail on the merits; (2) whether the party seeking the stay will suffer irreparable harm in the absence of a stay; (3) whether other interested parties will be substantially harmed by a stay; and (4) the public interest in granting or denying the stay. See *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958). A party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974); *Entergy Ark., Inc. v. Union Pac. R.R.*, NOR 42104, slip op. at 2 (STB served April 25, 2011).

Docket No. FD 36099, *Indiana Harbor Belt Railroad Co. – Trackage Rights – Consolidated Rail Corporation, CSX Transportation, Inc., and Norfolk Southern Railway Co, et al* (Served March 14, 2017)(“*Indiana Harbor*”) at 4. Petitioner must demonstrate all four elements to obtain the extraordinary relief he seeks, but he cannot demonstrate any them.

A. Petitioner is Not Likely to Succeed on the Merits

The Petitioner does not make a “strong showing” that he is likely to prevail in his attempt

to impugn the character of the principals of TransloadX-RR and convince the Board that the Notice of Exemption to acquire and operate the Maine Lines should be rejected. Quite the contrary. Petitioner does not assert that any statements in the Notice of Exemption are false or misleading. Petitioner does not dispute the accuracy of the description of the Maine Lines in the Notice of Exemption. Petitioner also does not assert that the Notice of Exemption is contrary to any of the 15 components of the Rail Transportation Policy listed in 49 U.S.C. §10101. In fact, at a minimum, exempting the proposed transaction is consistent with §§10101(1), (2), (4), (7), (8), (14) and (15). Finally, Petitioner also does not, and cannot dispute, that the principals have decades of experience operating railroad facilities.

At bottom, Petitioner's primary reason for seeking rejection of the Notice of Exemption is his view that the court rulings summarized above in a separate business dispute somehow make TransloadX-RR unfit to lease and operate the Maine Lines despite its principals' combined decades of railroad experience. As such, Petitioner cannot make the requisite "strong showing" that he is likely to succeed on the merits.

B. Petitioner Cannot Show Irreparable Harm

Petitioner's request for a stay also fails because he cannot demonstrate irreparable harm. First and foremost, the requirement of suffering irreparable harm applies to "the party seeking the stay." *Indiana Harbor, supra* at 4. Even Petitioner acknowledges that this element requires "irreparable harm to the petitioner," Petition at 5, yet he makes no claim that he personally will be harmed at all by the notice of exemption going into effect, let alone "irreparably" harmed. In fact, Petitioner cannot be irreparably harmed, since he has no ties to the Maine Lines. Since Petitioner does not and cannot demonstrate he personally would suffer irreparable harm, he cannot meet all

four of the elements required for the extraordinary relief of a stay, and the Board’s inquiry should stop there and the Petition for Stay should be dismissed.

Moreover, “the party seeking a stay must demonstrate that the injury claimed is “imminent, ‘certain and great.’” *Indiana Harbor* at 4, citing *Sault Ste. Marie Bridge Co.—Acquis. & Operation Exemption—Lines of Union Pac. R.R.*, FD 33290, slip op. at 6 (STB served Jan. 24, 1997) (quoting *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). See also, *Docket No. NOR 42178, Navajo Transitional Energy Company, LLC – Ex Parte Petition for Emergency Service Order* (Served June 23, 2023) at 17 (Fuchs Dissenting)(“Establishing irreparable harm requires that the alleged harm ‘must be both certain and great; it must be actual and not theoretical’” and “[b]are allegations of what is likely to occur are of no value since the court must decide whether the harm will in fact occur.”)(citations omitted).

Petitioner’s weak attempt to allege that irreparable harm will occur to others if the exemption goes into effect is contrary to the foregoing high standards. For example, Petitioner infers vaguely that the City of Framingham and “any other governmental entity seeking to enforce local law” would be harmed by TransloadX-RR potentially asserting “preemption defenses” in a future hypothetical local code enforcement proceeding. Petition at 5. This assertion of harm, which Petitioner does not even specifically allege would be “irreparable,” falls far short of a demonstration of harm that is “imminent, certain and great,” and “will in fact occur.” Moreover, as discussed above, the entire basis for this a claim of harm to others is merely his personal speculation, unsupported by any evidence, that obtaining exemption authority sought by the Notice of Exemption for the Maine Lines will result in TransloadX-RR “immediately assert[ing] federal preemption defenses against the City of Framingham and any other governmental body seeking to enforce local law.” *Id.* But even if such evidence existed that this was TransloadX-RR’s intent –

and it is not - the fact that a rail carrier (or a non-rail carrier conducting transloading operations under the auspices of a rail carrier) might assert that local and state regulations could be preempted by §10501(b) is hardly novel, nor the cause of irreparable harm to local and state governments. A finding that the activities of a rail carrier preempt state and local laws may not be well received by the local and state entities, but it is certainly not a cause of immediate, certain and great “irreparable harm.”

Petitioner also makes the secondary, facially absurd allegation that the rulings in the courts in Massachusetts will result in the two branch Maine Lines totaling 37.1 miles in length being operated in a manner that would “harm the integrity of the Maine rail network,” Petition at 5. Petitioner again does not specially define such alleged “harm” or even allege that it would be “irreparable,” which it quite obviously could not be under the Board’s standards; there are over 1000 miles of railroads in Maine.⁵ This argument should be summarily rejected.

In point of fact, no entity would be irreparably harmed by the exemption going into effect. It would merely mean that TransloadX-RR had permissive authority to lease and operate the Maine Lines. Moreover, the Board’s rules specifically state that exemption authority may be revoked at any time after it goes into effect pursuant to §10502(d) and Board precedent, and the Notice of Exemption is void *ab initio* even after it goes into effect if it is discovered later that it contained false or misleading information (which it does not).

C. TransloadX-RR Would be Substantially Harmed by a Stay

In sharp contrast to Petitioner, who would not be harmed at all by the exemption becoming effective, a stay would substantially harm TransloadX-RR. TransloadX-RR has worked hard to

⁵ <https://www.aar.org/maine/>

build a business plan to restore traffic on the Maine Lines and potentially lease and operate other branch lines in the northeast. Staying the effective date of the exemption would adversely affect and delay these efforts, which for the Maine Lines include customer development with at least three former rail users who are eager to use rail again, meetings with local economic development directors, investment in railroad specific maintenance equipment, agreements for locomotive leases, development of operating plans and maintenance plans, and business development through transloading. The Bucksport Maine Line also has an ongoing cleanup project that requires rail and communities that surround this line are looking for rail to support the cleanup and support new economic development.

D. The Public Interest Supports Allowing the Exemption to Become Effective

Finally, Petitioner cannot show the public interest supports a stay of the exemption effective date. As explained above two of his three reasons for claiming the transaction is not in the public interest are easily debunked, and the third is insufficient to overcome the numerous factors that make this transaction in the public interest. The lease of the Maine Lines by TransloadX-RR will enable it to provide common carrier rail service over two branch lines that have no current freight rail service, which will result in future rail traffic and financial relief for the rail users located along these lines. Accordingly, the Board should permit the exemption authority to go into effect on schedule 30 days from the filing date of the Notice of Exemption.

III. Conclusion

For all the foregoing reasons the Petition for Stay should be denied.

Respectfully submitted,

/ss/ Thomas W. Wilcox

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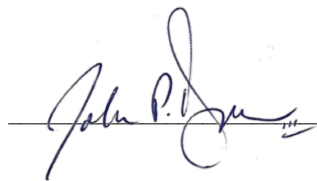
Attorney for TransloadX Railroad Company, Inc.

April 1, 2026

VERIFICATION

I, John DeWaele, President of TransloadX Railroad Company, Inc., state, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to execute this Verification.

Executed: April 1, 2026

A handwritten signature in blue ink, appearing to read "John P. DeWaele", is written over a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2026, a copy of the foregoing Verified Reply to Petition for Stay served on all parties of record on the official service list for Docket FD 36909.

/ss/ Thomas W. Wilcox
Thomas W. Wilcox