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Office of Chief Counsel
April 13, 2026
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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36909

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

REPLY TO PETITION OF CUMBERLAND & KNOX RAILROAD

TransloadX Railroad Company, Inc., (“TransloadX-RR”) hereby replies to the Petition of Cumberland & Knox Railroad (“C&K”) to Reject Notice of Exemption or, in the Alternative, for Stay of Effectiveness. (“Petition”). For all the reasons set forth below the Petition should be denied.

I. Cumberland & Knox Railroad Has an Agenda

C&K presents itself to the Board as simply a steward and protector of Maine’s rail infrastructure. Petition at 2. This may in part be true, but it is also true that C&K was a losing bidder for the lines that are the subject of the Notice of Exemption, something its Petition does not disclose. C&K’s protestations about the transaction must be reviewed by the Board in that context.

II. C&K Presents no Valid Grounds for Rejecting the Notice of Exemption

C&K’s Petition mostly seeks rejection of TransloadX-RR’s Notice of Exemption because of certain complaints C&K has about CSX Transportation, Inc. (“CSX”). The only grounds asserted against *TransloadX-RR* for rejection of the Notice of Exemption are (1) TransloadX-RR did “not mention the CSX acquisition” in Docket No. FD 36472, *CSX Transp., Inc. – Conrail* –

Pan Am Sys., Inc. (served April 14, 2022)(“*Pan-Am*”) and (2) the easily-disposed of, frivolous assertion that the Notice of Exemption is fatally flawed because the word “acquisition” appears in the Notice of Exemption’s caption.

As to the first argument, no provision of the Board’s regulations requires a party seeking exemption authority to lease a line of rail to include in its Notice of Exemption references to prior transactions involving the tracks. On the contrary, the regulations at 49 C.F.R. Part 1150, Subpart D require an applicant to only provide details of the current transaction. They do not require the applicant to engage in speculation about the details of preceding transactions – in this case *Pan-Am* - that some stakeholders might consider to be germane to the proposed transaction.

The cases cited by C&K at pages 7-8 of its Petition confirm the foregoing. Each references an issue associated with the proposed transaction, specifically: a contemporaneous dispute over ownership in Docket No. FD 35730, et al, *Eastside Community Rail, LLC – Acquisition and Operation Exemption – GNP Rly, Inc.* (served December 22, 2020); an undisclosed pending condemnation action in Docket No. FD 35042, *U.S. Rail Corp. – Lease and Operation Exemption – Shannon G. LLC* (served October 8, 2008); and an undisclosed impending condemnation action in Docket No. FD 33950, *Jefferson Terminal Railroad Company – Acquisition and Operation Exemption – Crown Enterprises, Inc.* (served March 19, 2001).

TransloadX-RR’s Notice of Exemption meets all the Board’s regulatory requirements under Part 1150, subpart D. The fact that it does not mention the *Pan-Am* transaction is therefore no grounds for rejecting it. C&K’s claims that the proposed TransloadX-RR lease transaction “raises unaddressed issues or question that require considerable scrutiny” by the Board are contrived and overblown.

C&K's second argument concerning TransloadX-RR's actions (Petition at 8-9) – that the Notice of Exemption “materially mischaracterizes the nature of the transaction” simply because the word “acquisition” appears in the case caption – is frivolous. Indeed, the assertion that a lease is not an acquisition of a party's interest in property is, frankly, unserious. There is no ambiguity or gray area here. The Board has previously established that the word “acquire” under 49 U.S.C. §10901(a) “includes acquisition by lease as well as purchase.” Docket No. AB 1242, *Hartwell First United Methodist Church – Adverse Abandonment and Discontinuance – The Great Walton Railroad Company, Inc., in Hart County, GA* (served January 31, 2018) at 8, note 5, citing a previous decision in that docket where the Board stated “[a]cquisitions of rail lines, including leases as well as purchases, are subject to the Board's licensing authority.” *Id.* (served August 31, 2017) at 3 (citation omitted). The phrase “acquisition by lease” appears in many Board filings and decisions. Accordingly, TransloadX-RR's use of the term “acquisition” in its Notice of Exemption governing a lease transaction is neither wrong, nor the first time this has occurred. *See*, Docket No. FD 36088, *SMS Rail Lines – Acquisition and Operation – Rail Line of WCC LLC, In Hudson Falls, NY* (Notice of Exemption filed January 15, 2017)(lease transaction). In summary, C&K's argument that the use of the word “acquisition” in the case caption of a track lease transaction warrants rejection of the Notice of Exemption is clearly belied by the Board's well-established rules and principles.

III. C&K Asserts no Valid Grounds to Stay the Effective Date of the Exemption

Finally, C&K's request that the Board should stay the effective date of the exemption should also be denied because C&K cannot meet the standards for 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.

C&K first has not demonstrated that it will prevail on the merits. TransloadX-RR has demonstrated above that C&K’s three so-called “extremely strong arguments” - which C&K doesn’t bother to restate or summarize in its stay request section - are all meritless.

Second, C&K falls far short of showing that permitting the exemption to go into effect would cause irreparable harm to C&K. The requirement of suffering irreparable harm applies to “the party seeking the stay.” *Indiana Harbor*, *supra* at 4. However, C&K only makes vague references to alleged harm to “the public, shippers, and local governments.” Petition at 9. 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). Despite this strict standard, C&K only alleges that there is “confusion.” Petition at 9. To the extent this can generously be considered to refer to harm of any degree, it clearly falls far short of a demonstration of harm that is “imminent, certain and great,” and “will in fact occur.”

Third, while C&K would not be harmed at all by the exemption becoming effective, a stay would substantially harm TransloadX-RR to the benefit of C&K. TransloadX-RR has worked hard to build a business plan to restore traffic on the Maine branch lines that are the subject of the proposed transaction and to 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 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.

Finally, C&K cannot show the public interest supports a stay of the exemption effective date. The lease of the lines covered by the Notice of Exemption 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.

I. Conclusion

For all the foregoing reasons C&K's Petition should be denied in all respects.

Respectfully submitted,

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April 13, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2026, a copy of the foregoing Reply was served by email on all parties of record on the official service list for Docket No. FD 36909.

/ss/ Thomas W. Wilcox
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