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February 8, 2018

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

ENTERED
Office of Proceedings
February 8, 2018
Part of
Public Record

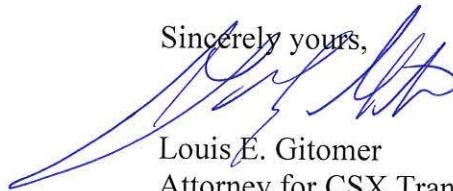
Re: **Docket No. AB-55 (Sub-No. 775X), CSX Transportation, Inc.—
Abandonment—in Clark, Floyd, Lawrence, Orange, and Washington Counties,
IN**

Dear Ms. Brown,

Enclosed for efilings is CSX Transportation, Inc.'s Motion to Reject the Notice of Intent filed by Paul Didelius on February 5, 2018.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (SUB-NO. 775X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION— IN CLARK, FLOYD,
LAWRENCE, ORANGE, & WASHINGTON COUNTIES, IND.

CSX TRANSPORTATION, INC. MOTION TO REJECT

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: February 8, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (SUB-NO. 775X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION— IN CLARK, FLOYD,
LAWRENCE, ORANGE, & WASHINGTON COUNTIES, IND.

CSX TRANSPORTATION, INC. MOTION TO REJECT

CSX Transportation, Inc. (“CSXT”), pursuant to 49 C.F.R. § 1152.27, respectfully moves the Surface Transportation Board (the “Board”) to reject the Notice Expressing Intent to File an Offer Of Financial Assistance (the “NOI”) filed on behalf of Paul Didelius and investors (the “Didelius”) on January 16, 2018, as amended and supplemented twice on January 18, 2018, and then supplemented on February 5, 2018, for failing to comply with the requirements of 49 C.F.R. § 1152.27(c)(2).

The Board previously found that:

Mr. Didelius’ and MRY’s notices of intent to file an OFA (including any relevant supplements and amendments) do not comply with the Board’s new requirements at 49 C.F.R. § 1152.27(c)(2)(i). As such, a determination of preliminary financial responsibility cannot be made.

CSX Transportation, Inc.—Abandonment Exemption—in Clark, Floyd, Lawrence, Orange, & Washington Counties, Ind., AB 55 (Sub-No. 775X) (served January 26, 2018), slip op. at 1-2.

The Board then stated that “Mr. Didelius and MRY will be permitted to supplement their notices

by February 5, 2018, to comply with the Board's new OFA rule."¹ *Id.*

Mr. Didelius filed a supplement of February 5, 2018 (the "Supplement"), purporting to demonstrate Mr. Didelius' preliminary financial responsibility. The Supplement consists of a statement that Mr. Didelius is the potential offeror, that he is seeking to purchase about 32 miles of railroad from CSXT between mileposts OOQ251.7 and OOQ284.0 (the "Line"), that he cannot reveal the likelihood of restoring rail service because of sensitive discussions, that Mr. Didelius controls a railroad holding company (Frontier Rail Companies ("Frontier")), that he estimates the cost of the Line to be \$1,417,600, and that his proof of preliminary financial responsibility is a "Letter of Credit from Key Bank."

The Supplement fails to meet the Board's requirements in 49 C.F.R. § 1152.27(c)(2)(i).

Mr. Didelius is the offeror and he claims to demonstrate preliminary financial responsibility based on a Letter of Credit from Key Bank. The document provided from Key Bank is a Summary of Terms and Conditions dated August 17, 2016 (the "Summary") in the amount of \$1,500,000 to the Borrower **Frontier**, not Mr. Didelius.² The purpose of the Revolving Line of Credit is "To provide working capital support" and is secured by a security interest in Frontier's accounts receivables and all business assets.³

Mr. Didelius does not indicate that the Revolving Line of Credit is still active. Nor does he demonstrate that there are any funds available under the Revolving Line of Credit, much less the \$1,417,600 value of the Line that he claims (which does not include the value of the real estate). In the attached Exhibit, CSXT has recalculated the preliminary financial responsibility

¹ Instead of filing a supplement, MRY sought an additional two week extension of time, which was denied by the Board. *CSX Transportation, Inc.—Abandonment Exemption—in Clark, Floyd, Lawrence, Orange, & Washington Counties, Ind.*, AB 55 (Sub-No. 775X) (served February 6, 2018).

² Mr. Didelius is a guarantor of the Revolving Line of Credit, but not the Borrower.

³ A footnote to the Summary states "Confidential – This document is for Management, Owners, Board Members, Guarantors and Trusted Advisors, and is restricted from further distribution." By making the Summary public, Mr. Didelius may well have committed a material breach of the Revolving Credit Agreement causing the termination of the Revolving Credit Agreement.

submission to be between \$1,430,890-\$1,645,302, which indicates that even the \$1,500,000 Revolving Line of Credit, if it is fully available, will not cover the acquisition cost (which will include real estate values).

The Revolving Line of Credit is provided to Frontier for a specific purpose, and that purpose does not include acquisition of an additional railroad line.

Mr. Didelius is not the borrower under the Revolving Line of Credit and Frontier is not the potential offeror. The Board requires identification of the potential offeror. 49 C.F.R. § 1152.27(c)(1)(iv)(F). If Mr. Dielius is the potential offeror, he has not demonstrated that he personally is preliminarily financially responsible, and if Frontier is the offeror, Frontier has not identified itself as the potential offeror. In either scenario, Mr. Didelius has not complied with the Board's rules.

Mr. Didelius refuses to demonstrate that there is a continued need for rail service, even though the Line has not served shippers since the Board exempted discontinuance in 2010 after holding a public meeting and carefully considering the testimony at that hearing.⁴ *CSX Transportation, Inc.—Discontinuance of Service Exemption—in Clark, Floyd, Lawrence, Orange, and Washington Counties, IN*, STB Docket No. AB-55 (Sub-No. 698X) (served April 7, 2010), slip op. at 4. The traffic alluded to at that public meeting and hoped for by CSXT has not developed.

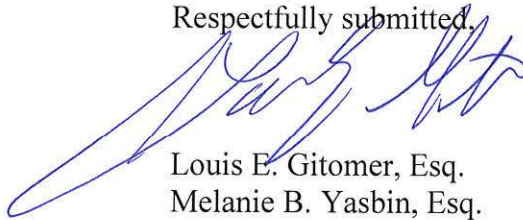
Initially, Mr. Didelius made three filings with the Board and the Board concluded that they “do not comply with the Board’s new requirements at 49 C.F.R. § 1152.27(c)(2)(i).” The Board gave Mr. Didelius a fourth opportunity to prove that he meets the preliminary financial responsibility test. The NOI does not meet the preliminary financial responsibility test. The Revolving Credit Agreement is not in Mr. Didelius’ name, limits the use to be made of the

⁴ Instead he claims confidentiality, which could have easily been resolved by filing a protective order, but was not.

available funds, and does not indicate whether any funds are available under the Revolving Line of Credit, much less the level of funding necessary to meet the Board's preliminary financial responsibility test.

The Board can reject a filing when it fails to comport with the Board's filing rules. *See Nevada Central Railroad—Exemption for Acquisition and Operation of Rail Service—in Elko and White Pine Counties, NV*, STB Docket No. FD-34773 (STB served Nov. 22, 2005). Based on Mr. Didelius' failure to comply with the specific rules requiring a demonstration of preliminary financial responsibility, and the other shortcomings in the NOI identified by CSXT, CSXT respectfully requests that the Board reject the fatally defective NOI with prejudice and not require CSXT to provide valuation information to Mr. Didelius.

Respectfully submitted,



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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: February 8, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have caused this letter to be served upon all parties of record by electronic service.

A handwritten signature in blue ink, appearing to read 'L. Gitomer', is written over a horizontal line.

Louis E. Gitomer
February 8, 2018

EXHIBIT – CALCULATION OF PRELIMINARY FINANCIAL RESPONSIBILITY SUBMISSION

Based on the formula contained in 49 C.F.R. § 1152.27(c)(1)(iv)(B)⁵, Mr. Didelius has miscalculated the preliminary financial responsibility amount.

CSXT will accept the \$275 scrap price per net ton delivered for the purpose of this pleading, but reserves the right to challenge that amount in any further proceedings.

CSXT objects to the use of 32 miles as the length of track for two reasons. First, the distance between mileposts OOQ251.7 and OOQ284.0 is 32.3 miles, not the 32 miles used by Mr. Didelius. Second, there are 4.84 miles of sidings on the Line which were not accounted for.

Excluding the sidings, CSXT calculates the the preliminary financial responsibility amount as follows:

$$(\$275 \times 32.3 \times 132) + (\$4,000 \times 32.3 \times 2) = \$1,430,890.$$

Including the sidings, CSXT calculates the the preliminary financial responsibility amount as follows:

$$(\$275 \times 37.14 \times 132) + (\$4,000 \times 37.14 \times 2) = \$1,645,302.$$

⁵ (Scrap Price per Ton X Mileage X 132) + (\$4,000 X Mileage X 2).