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Office of Proceedings
August 3, 2017
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August 1, 2017

VIA OVERNIGHT MAIL

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: STB Docket No. FD 36095, Palmetto Railways – Petition for Exemption – In
Berkeley County, South Carolina

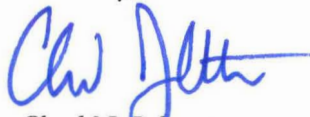
Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are the original and eleven (11) copies of the **Petition for Exemption** of Palmetto Railways, as well as a check tendered in the amount of the associated filing fee. Also enclosed for filing is an original and eleven (11) copies of a **Petition for Waiver of the Filing Fee** associated with the Petition for Exemption on account of Palmetto Railways' status as an agency of the State of South Carolina. Please note that, with respect to both Petitions, expedited review has been requested. Also enclosed is a disk containing pdf copies of the filings, as well as the text of the filings in Word format.

Please accept the original and ten (10) of the copies of each of the Petitions for filing and return the two (2) extra copies of the respective filings bearing your file-stamp to me via the enclosed envelope. If you have any questions or if you need any additional information, please do not hesitate to contact me.

FILED
August 3, 2017
SURFACE TRANSPORTATION BOARD

Sincerely,


Chad N. Johnston

FEE RECEIVED
August 3, 2017
SURFACE TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36095
Palmetto Railways – Construction Exemption – In Berkeley County, South Carolina
Camp Hall Commerce Park Rail Connection

PETITION FOR EXEMPTION
FROM 49 U.S.C.A. § 10901 UNDER 49 U.S.C.A. § 10502

Respectfully submitted,

Randolph R. Lowell
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(843) 619-4426

Attorneys for Palmetto Railways

August 1, 2017

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36095
Palmetto Railways – Construction Exemption – In Berkeley County, South Carolina
Camp Hall Commerce Park Rail Connection

PETITION FOR EXEMPTION
FROM 49 U.S.C.A. § 10901 UNDER 49 U.S.C.A. § 10502

I. INTRODUCTION

Pursuant to 49 U.S.C.A. § 10502, Palmetto Railways seeks an exemption from 49 U.S.C.A. § 10901 allowing it to locate, build, own, and operate a new industrial rail line (“Proposed Line”) in Berkeley County, South Carolina. The purpose of the Proposed Line is to provide rail service from the Camp Hall Commerce Park, which is under development, to the A-Line of CSX Transportation, Inc. (“CSXT”) (through the CSXT Cross Subdivision connection), further providing continuous access to the Port of Charleston and the United States rail network for domestic distribution. Once constructed, the Proposed Line will be approximately 22.7 miles in length, with a 100-foot right-of-way.

Palmetto Railways is an instrumentality of the State of South Carolina and a Division of the South Carolina Department of Commerce, a public agency of the State of South Carolina. Established in 1969, Palmetto Railways is a Class III rail carrier whose purpose is to promote the economic viability of South Carolina by providing safe, efficient, and cost-effective rail solutions to facilitate the movement of freight and to support economic development efforts. Palmetto Railways provides technical assistance and consulting services in railroad matters to state, local, and municipal governments in South Carolina, in addition to operating four railroad subdivisions.

The proposed exemption would be subject to the completion of an environmental review by the Board's Office of Environmental Analysis ("OEA"), which is underway. For the reasons stated herein, Palmetto Railways seeks expedited consideration of the within petition.

II. FACTUAL BACKGROUND

Palmetto Railways is requesting regulatory approval to locate, build, own, and operate an industrial rail line between the A-Line of CSXT near Santee Cooper's Cross Generating Station¹ (through the CSXT Cross Subdivision connection) and the Camp Hall Commerce Park in Berkeley County, South Carolina. The need for the Proposed Line derives from the development of the Camp Hall Commerce Park, which has increased the demand for rail service to interconnect the commerce park with a Class 1 rail network within South Carolina in a manner that is logistically feasible to better serve the needs of future tenants and industry within the Camp Hall Commerce Park for transportation, distribution, and logistics. The primary tenant of the commerce park is Volvo Cars North America ("Volvo Cars"), which is currently constructing the company's first North American manufacturing facility at the Camp Hall Commerce Park. Additional industrial development and tenants are expected, including associated support industries that desire to locate in proximity to Volvo Cars in the future.

The addition of the Proposed Line will provide an alternate mode of freight transportation for current and future tenants of the Camp Hall Commerce Park, reducing the distribution and transportation burden on the surrounding communities and existing infrastructure. In addition, the Proposed Line is expected to open the door to greater economic development efforts to support the state of South Carolina, making the location of future industry in the area more

¹ Santee Cooper, also known as the South Carolina Public Service Authority, is a state-owned electric and water utility headquartered in Moncks Corner, South Carolina.

attractive and thus benefiting Palmetto Railways' parent agency — the Department of Commerce — in its recruitment of industry to the state.

In support of the Proposed Line, on September 6, 2016, Palmetto Railways sent a letter to OEA providing an initial description of the Proposed Line and requesting that OEA initiate an environmental review process in conjunction with the United States Army Corps of Engineers, Charleston District ("USACE"), under their respective jurisdictions in accordance with the National Environmental Policy Act, 42 U.S.C.A. §§ 4321 *et seq.*, as amended ("NEPA"). *See* Pet. Ex. 1. On November 30, 2016, members of OEA staff and the Office of Public Assistance, Government Affairs, and Compliance, met with representatives of Palmetto Railways, the South Carolina Department of Commerce, and the USACE. Following that meeting, on January 24, 2017, Palmetto Railways filed a request for a waiver of the six-month pre-filing notice requirement, which OEA granted on February 3, 2017. *See* Pet. Exs. 2 and 3. Consistent with the procedures set forth in 49 C.F.R. § 1105.10(d), on March 28, 2017, Palmetto Railways requested the approval of OEA to retain ICF Jones and Stokes Inc. ("ICF") as an independent third-party consultant for the preparation of the necessary environmental documentation for the project, which was approved on April 3, 2017. *See* Pet. Exs. 4 and 5. Thereafter, Palmetto Railways, ICF, OEA, and the USACE executed a memorandum of understanding setting out the parameters of ICF's preparation of environmental documentation for the project in accordance with NEPA. *See* Pet. Ex. 6.

On March 10, 2017, OEA requested USACE to participate as a joint lead agency in the preparation of the environmental documentation for the Proposed Line. In a letter dated April 19, 2017, the USACE accepted OEA's request, and OEA and the USACE subsequently executed a memorandum of understanding outlining the respective responsibilities of the agencies as joint

leads for the project. In due course, Palmetto Railways intends to file a request for approval of a waiver of the default requirement of the preparation of an Environmental Impact Statement (“EIS”) in favor of a finding that the preparation of an Environmental Assessment (“EA”) is appropriate for this project, because the Proposed Line is not likely to have a significant environmental impact, and what impacts do occur are adequately mitigated.

Pursuant to 49 C.F.R. § 1105.10(d), Palmetto Railways understands that, because it has engaged ICF as a third-party contractor approved by OEA, *see* Pet. Exs. 5 and 6, 49 C.F.R. § 1105.7(a)’s requirement that Palmetto Railways serve entities listed in § 1105.7(b) with copies of the Proposed Line’s Environmental Report, as well as submit a copy of the served Environmental Report to the Board in connection with this Petition, is waived. Additionally, pursuant to 49 C.F.R. § 1105.8(e), Palmetto Railways understands that its engagement of ICF waives § 1105.8(c)’s requirement to distribute a copy of the Historic Report to the South Carolina State Historic Preservation Officer not later than 20 days prior to this filing. Palmetto Railways is cooperating with ICF related to its duties on this Proposed Line and, pursuant to 49 C.F.R. §§ 1105.10(d) and 1105.8, has already provided ICF with the documents and information compiled as a part of the environmental and historic reporting requirements for the purpose of ICF’s preparation of the necessary documentation for the project. Concurrent with the within Petition for Exemption, Palmetto Railways is also filing a Petition for Waiver of the Filing Fee associated with the Petition for Exemption pursuant to 49 C.F.R. § 1002.2(e) on the basis of Palmetto Railways’ status as an agency of the State of South Carolina. In the interest of the timely processing of this Petition for Exemption, however, the Filing Fee is submitted.

III. DESCRIPTION OF THE PROPOSED LINE AND PLANNED OPERATIONS

The Proposed Line will be a short-line rail track that begins at a new connection to the A-Line of CSXT (through the CSXT Cross Subdivision connection), and terminates within the Camp Hall Commerce Park. The entire Proposed Line will be within Berkeley County, South Carolina. The connection to CSXT will occur on Santee Cooper property adjacent to its Cross Generating Station, and will cross the Diversion Canal between Lake Marion and Lake Moultrie, running south-southwest to the Camp Hall Commerce Park ("Project Right-of-Way"). South of the Diversion Canal, the Project Right-of-Way traverses the unincorporated rural community of Cross, estimated total population of 7,253 in 2015. Beyond the Cross community, the Project Right-of-Way continues south through an intensively managed pine plantation in short pulp rotations, before reaching the Camp Hall Commerce Park.

The Camp Hall Commerce Park comprises approximately 6,781 acres, of which 2,880 acres have been permitted by Berkeley County for development of Volvo Cars' advanced automotive manufacturing facility, which is expected to begin production by the end of 2018. An additional 1,387 acres of the Camp Hall Commerce Park is being permitted for industrial development by Santee Cooper. The Proposed Line is intended to bring industrial rail service to the entirety of the Camp Hall Commerce Park. The development of the Camp Hall Commerce Park has increased the demand for rail service to interconnect the industry locating at the park with an existing Class 1 rail network and direct access to the Port of Charleston.² Rail service is an additional transportation mode that enhances options for distribution and logistics for the

² Volvo Cars and industry associated with advanced manufacturing facilities place significant emphasis on locating facilities in locations that have adequate infrastructure, including access to roads, rail and the port facilities in South Carolina. These types of required infrastructure are necessary for use in domestic sales and exporting automobiles, as well as proximity and transportation for component parts and suppliers.

industrial development and the customers that locate at the Camp Hall Commerce Park. By meeting the needs of the industrial tenants at the Camp Hall Commerce Park, as well as providing capacity for other future development, the Proposed Line will support the State of South Carolina and Berkeley County's infrastructure needs and will help alleviate highway congestion involving large commercial trucks.

The Proposed Line will run approximately 22.7 miles. The nature of the Project Right-of-Way is a mix of commercial, residential, and silvicultural properties, mostly covered by forests and forested wetlands. Because the majority of the alignment is in active silviculture areas, it will have minimal hazardous effects on potential environmental justice communities. The Proposed Line is Palmetto Railways' preferred route alternative because it is within a range of reasonable impacts that are proposed to be fully mitigated, it affects the least number of individual parcels within the Project Right-of-Way, it does not require any relocations, and it has no known archaeological sites.

IV. ARGUMENT SUPPORTING EXEMPTION

Generally, construction of new common carrier railroad lines requires Board approval under 49 U.S.C.A. § 10901(a)(1), (2). Under 49 U.S.C.A. § 10901(c), the Board is directed to authorize a rail line construction project “*unless* the Board finds that such activities are inconsistent with the public convenience and necessity.” (Emphasis supplied). As the Board held in *Midwest Generation -- Exemption -- Construction Will County, IL*, 6 STB 218, 2002 WL 437218 (S.T.B. Mar. 20, 2002) at 225:

This permissive licensing policy, introduced in the ICC Termination Act of 1995 (ICCTA), establishes a clear presumption in favor of rail construction proposals, and conforms to the broader Congressional policies to promote “effective competition among rail carriers and to reduce barriers to entry into ... the industry” 49 U.S.C. § 10101(4), (7)....

(Internal citations omitted.) Pursuant to 49 U.S.C.A. § 10502(a), the Board shall exempt a proposed track construction from the detailed application process of 49 U.S.C.A. § 10901 when the Board finds (1) that process is not necessary to carry out the rail transportation policy of 49 U.S.C.A. § 10101; and (2) either (a) the proposal is of limited scope, or (b) the application process is not necessary to protect shippers from abuse of market power. The Board is to apply the exemption provisions broadly in pursuing exemptions for transportation or service that comply with the standards of the exemption statute. *See, e.g., American Trucking Ass'n v. ICC*, 656 F.2d 1115, 1119 (5th Cir. 1981). The legislative history of 49 U.S.C.A. § 10502 confirms Congress's intent that the Board liberally apply its exemption authority for qualifying transactions in order to lift the burden of the administrative and financial costs associated with continued regulation. For example, pursuant to the Staggers Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress instructed the predecessor agency to the Board to use the expanded exemption authority provided in § 10502.

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of [the Staggers] Act, the [predecessor to the Board] will pursue partial and complete exemption from remaining regulation.

H.R. Rep No. 1430, 96 the Cong. 2d Sess. 105 (1980).³

³ *See also Exemption from Regulation—Boxcar Traffic*, 3371 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Thereafter, Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Proposed Line involves a “line of railroad” subject to the Board’s jurisdiction.

Palmetto Railways submits that the Proposed Line constitutes a “line of railroad” as the Board construes that term, which would require a license to construct and operate under 49 U.S.C.A. § 10901. Accordingly, Palmetto Railways seeks residual common carrier authority as an existing Class III rail carrier to enable it to “hold out” the provision of rail service to the public at large on this new line, which independently satisfies this Board’s test and precedent of common carriage status. *See, e.g., Effingham R.R. Co.-Petition for Declaratory Order-Constr. at Effingham, IL*, 2 S.T.B. 606, 1997 WL 564155 (S.T.B. 1997) (holding that the construction of a new rail line to serve a new rail shipper constitutes a line of railroad, notwithstanding the carrier’s assertion that its use is merely for switching operations).

Even if the Board were to disregard Palmetto Railways’ status as an existing Class III common rail carrier, a review of proceedings before the Board reveals that it has approved a number of relatively minor construction projects undertaken by agencies seeking common carrier status for new lines of railroad, similar to the Proposed Line. *See, e.g., Pemiscot Cty. Port Auth. -- Constr. Exemption -- Pemiscot Cty., Mo*, FD 34117, 2002 WL 1425588 (S.T.B. June 25, 2002) (involving the construction by a non-carrier of 5 miles of new rail to serve a new port on the west bank of the Mississippi River); *Port of Moses Lake - Construction Exemption - Moses Lake, Washington*, FD 34936, 2009 WL 2847979 (S.T.B. Aug. 21, 2009), (involving a non-carrier’s construction and acquisition of 11.5 miles of track); *Ellis County Rural Rail Transportation District -- Construction and Operation Exemption -- Ellis County, TX*, FD 33731, 2000 WL 175281 (S.T.B. Feb. 8, 2000) (involving the construction by a non-carrier of 4.8 miles of new track to serve an industrial park); and *Arizona Eastern Railway, Inc., Construction Exemption in*

Graham County, AZ, FD 34836, 2009 WL 921533 (S.T.B. April 6, 2009) (approving the construction of 12.1 miles of new track to serve a single industry by an existing carrier). Several of the proponents of the foregoing projects asserted that the availability of rail service would be an advantage in attracting customers or industry to their projects. *See, e.g., Pemiscot and Ellis, supra*. Here, the construction of the Proposed Line would similarly benefit the state of South Carolina's recruitment of additional development to the Camp Hall Commerce Park and other developable lands; however, Palmetto Railways' proposal is in an even stronger position because the Proposed Line would meet existing demand for rail service at the development as a result of the Volvo Cars facility.

B. A grant of this exemption is warranted.

While the Proposed Line would ordinarily be subject to approval by the Board under the formal requirements of 49 U.S.C.A. § 10901 and the related regulations, the Board has generally allowed smaller construction proposals such as the one proposed by Palmetto Railways to utilize the individual exemption procedures of 49 U.S.C.A. § 10502 to obtain approval. *See Midwest, supra*. For the reasons set forth below, Palmetto Railways submits that the Proposed Line falls squarely within the type of typical new line construction projects Congress authorized the Board to approve through the grant of an exemption under § 10502.

i. *Application of 49 U.S.C.A. § 10901 is not necessary to further the national transportation policy.*

Palmetto Railways respectfully submits that requiring it to comply with the formal requirements and regulations related to the Proposed Line is not necessary to further the national transportation policy set forth in 49 U.S.C.A. § 10101. Specifically, § 10101 provides that:

In regulating the railroad industry, it is the policy of the United States Government--

- (1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;
- (2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;
- (3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;
- (4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;
- (5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;
- (6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;
- (7) to reduce regulatory barriers to entry into and exit from the industry;
- (8) to operate transportation facilities and equipment without detriment to the public health and safety;
- (9) to encourage honest and efficient management of railroads;
- (10) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of increases of general applicability;
- (11) to encourage fair wages and safe and suitable working conditions in the railroad industry;
- (12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;
- (13) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information;
- (14) to encourage and promote energy conservation; and
- (15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.

49 U.S.C.A. § 10101. This section, originally enacted in the Staggers Rail Act amendments and incorporated into the ICC Termination Act, represents Congress' expression of rail transportation

policy. In evaluating a request for exemption from regulation in accordance with the national transportation policy, the Board has found that a proposal's satisfaction of elements of that policy can be deemed evidence and justification for evaluating the proposal under an exemption and outside of the traditional application process. *See, e.g., Midwest, supra*, 2002 WL 437218 at *5-6. The Board will look to those provisions of the rail transportation policy that are relevant or pertinent to the underlying statutory provision from which the exemption is sought. *California High-Speed Rail Authority – Construction Exemption – In Fresno, Kings, Tulare, and Kern Counties, Cal.*, FD 35724, 2014 WL 3973120, *10 (S.T.B. August 11, 2014); *see also Alaska Survival v. Surface Transportation Board*, 705 F.3d 1073, 1083 (9th Cir. 2013). Additionally, the Board has previously determined that §§ 10101(2), (4), (5), (7), and (14) of the rail transportation policy are policy goals promoted by § 10901. *California High-Speed Rail Authority*, 2014 WL 3973120 at *10.

Here, Palmetto Railways respectfully submits that construction and operation of the Proposed Line would promote the rail transportation policy expressed by Congress in many respects. First, exemption of the Proposed Line would promote the policies expressed in subsections (1) and (4) in that introducing rail service to a development that would otherwise be served solely by truck allows both competition between different modes of transportation and the demand for rail services to establish reasonable rates for transportation by rail. Of particular importance to the State of South Carolina and communities surrounding the Project Corridor, an exemption of the Proposed Line would promote transportation safety by removing future truck traffic from already overburdened area roads, highways, and interstates, as expressed in subsection (8) thereby enhancing highway safety once the Volvo Cars facility and associated industry is operating. In addition, exemption of the Proposed Line would reduce the need for

Federal regulatory control over the rail transportation system, as expressed in subsection (2), and it would foster sound economic conditions and ensure effective competition and coordination between rail carriers and other transportation modes, as expressed in subsection (5). Moreover, ownership and operation of the Proposed Line by an independent, state-run Class III carrier would encourage honest and efficient management of railroads, as well as prohibit predatory pricing and practices, avoid undue concentrations of market power, and prohibit unlawful discrimination, as expressed in subsections (9) and (12). Finally, exemption of the Proposed Line by the Board would reduce regulatory barriers to entry into the industry and provide for the expeditious handling and resolution of this proceeding, as expressed in subsections (7) and (15).

In sum, relieving Palmetto Railways from the obligation of filing a formal application for authority to construct and operate the Proposed Line would be consistent with all applicable national rail policies.

ii. *The Proposed Line is one of limited scope.*

The second prong of the exemption analysis is stated in the alternative: either the transaction must be of limited scope, or the application process is not needed to protect shippers from abuse of market power. Although required to satisfy only one of those standards, the Proposed Line construction and operation satisfy both.

First, the construction and operation of the Proposed Line is one of limited scope, as it has a clearly defined beginning and ending point. The Proposed Line would begin within the Camp Hall Commerce Park and terminate with a connection at the CSXT Cross Subdivision which provides service to the existing A-Line of CSXT. The Proposed Line will traverse only 22.7 miles in total, a Project Corridor that consists of a rural mix of commercial, residential, and

silvicultural properties, including a managed pine plantations. Further, the connecting rail carrier, CSXT, supports the construction of the Proposed Line.

Moreover, the Board has previously deemed projects of comparable size to be limited of scope. *See, e.g., The Burlington Northern and Santa Fe Railway Co. - Construction and Operation Exemption - Seadrift and Kamey, TX*, FD 34003, 2001 WL 684312 (S.T.B. June 12, 2001) (8.5 miles); *Missouri Pacific R.R. Co. - Construction and Operation Exemption – Harris and Chambers Counties, TX*, FD 32571, 1995 WL 385792 (S.T.B. June 27, 1995) (10.5 miles); *Burlington Northern R.R. Co. – Construction and Operation Exemption - Macon and Randolph Counties, MO*, FD 32229, 1993 WL 483602 (S.T.B. Sept. 13, 1993) (17 miles); and *The Elk River R.R. - Construction and Operation Exemption - Clay and Kanawha Counties, WV*, FD 31989, 1992 WL 125046 (S.T.B. May 21, 1992) (30 miles).

iii. *In the alternative, application of 49 U.S.C.A. § 10901 is not necessary to protect shippers from abuse of market power.*

Notwithstanding the limited scope of the Proposed Line, the project also meets the alternative prong, that regulation is not needed to protect shippers from abuse of market power. The Proposed Line is intended to enhance rail service to shippers, as currently there is no rail service to the Camp Hall Commerce Park. Under current conditions, once the Volvo Cars facility and other future industry is operational at the commerce park, access of goods to and from the site would be limited to trucks on local roads, highways, and Interstate 26, or a combination of a truck/rail transload service. Consequently, the Proposed Line would enhance intermodal competition by providing shippers in the area with a freight rail option that does not currently exist, thereby creating an alternative to shipment solely by truck. The provision of an additional form of transportation competition has been found by the Board to satisfy this alternative consideration. *See, e.g., Ameren Energy Generating Company - Construction and*

Operation Exemption - in Coffeen and Walshville, IL., FD 34435, 2006 WL 392131 at *3 (S.T.B. Feb. 17, 2006) (“[T]he proposed rail line will provide the area with additional transportation options and enhanced competition.”); *Entergy Arkansas and Entergy Rail-Construction and Operation Exemption - White Bluff to Pine Bluff, AR*, FD 33782, 2000 WL 549992 at *3, (S.T.B. April 25, 2000) (“The proposed transaction will provide ... an additional rail transportation option and thus will enable [the shipper] to realize the benefits of increased railroad competition.”); *Southern Gulf Railway Co. - Construction and Operation Exemption - In Calcasieu Parish, LA*, FD 32321, 1993 WL 343947 (S.T.B. Aug. 27, 1993) (construction and operation of a new rail line to serve a utility coal shipper held not to subject shippers to carrier market power abuses).

V. EXPEDITED HANDLING REQUESTED

Palmetto Railways respectfully requests that the Board expedite consideration of the within petition for exemption. Palmetto Railways has worked diligently to gather and prepare the required documentation for the Proposed Line, including meetings and conferences with OEA, obtaining a waiver of the six-month pre-filing notice requirement, and timely selection and presentation for approval of ICF as an independent third-party consultant. This documentation establishes a demonstrated need for the addition of the Proposed Line and its capacity and that it will not have a significant impact on the environment. Accordingly, expedited consideration is warranted and requested.

VI. CONCLUSION

Based on the foregoing, Palmetto Railways respectfully requests that the Board expeditiously grant an exemption from the provisions of 49 U.S.C.A. § 10901 pursuant to 49 U.S.C.A. § 10502 and permit the construction and operation of the Proposed Line.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Chad N. Johnston", is written over a horizontal line.

Randolph R. Lowell

Chad N. Johnston

WILLOUGHBY & HOEFER, P.A.

Post Office Box 10

Charleston, SC 29402

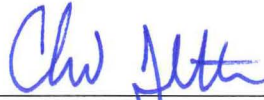
(843) 619-4426

Attorneys for Palmetto Railways

August 1, 2017

VERIFICATION

I, Chad N. Johnston, on behalf of Palmetto Railways, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to make this verification and to file this petition.



Chad N. Johnston
August 1, 2017

TABLE OF EXHIBITS

Exhibit Number	Document Name
Exhibit 1	September 6, 2016 Palmetto Railways Ltr. to STB - OEA
Exhibit 2	January 24, 2017 Palmetto Railways Ltr. to STB – OEA (Requesting Waiver of Six-Month Pre-filing Notice)
Exhibit 3	February 3, 2017 STB – OEA Ltr. to Palmetto Railways (Approving Waiver of Six-Month Pre-filing Notice)
Exhibit 4	March 28, 2017 Palmetto Railways Ltr. to STB – OEA (Proposing Third-Party Consultant and Requesting Approval)
Exhibit 5	April 3, 2017 STB – OEA Ltr. to Palmetto Railways (Approving Third-Party Consultant)
Exhibit 6	Third-Party Consultant Memorandum of Understanding

Exhibit 1



September 6, 2016

Phillis Johnson-Ball
Deputy Director
Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Re: Palmetto Railways, Camp Hall Rail Project

Dear Ms. Johnson-Ball:

The purpose of this letter is to make our introduction to you and your Office, briefly describe Palmetto Railways' proposed project, and open a line of communication that Palmetto Railways hopes will facilitate and foster an effective working relationship between Palmetto Railways, the OEA, and the United States Army Corps of Engineers, Charleston District (Corps).

Palmetto Railways is an instrumentality of the State of South Carolina and is a Division of the South Carolina Department of Commerce. Established in 1969, Palmetto Railways' purpose is to promote the economic viability of South Carolina by providing safe, efficient and cost-effective rail solutions to facilitate the movement of freight and to support economic development efforts. Palmetto Railways provides technical assistance and consulting services in railroad matters to state, local and municipal governments in South Carolina, in addition to operating three railroad subdivisions.

The proposed new industrial rail line is located entirely within Berkeley County, South Carolina, and will connect the Camp Hall Commerce Park to existing railroad right-of-way, near the Santee Cooper Cross Generating Station. Palmetto Railways proposes to construct, own and operate the rail line. Palmetto Railways is currently in the process of gathering information for the proposed rail project; therefore, neither the preferred rail route nor the environmental impact of the project has been determined, and a formal permit application is still in the process of development. However, a proposed project study area has been identified and is being studied by Palmetto Railways in order to determine the best route for the rail line. Initial information and resources regarding this project are available at: <http://www.palmettorailwayscamphallrail.com>.

The purpose of this letter is to request that Surface Transportation Board's Office of Environmental Analysis initiate the environmental review process for the Camp Hall Rail Project in conjunction with the Corps, as co-lead agencies, as required under the National Environmental Policy Act of 1969, as amended (42 U.S.C.A. §§ 4321 *et seq.*) (NEPA). Please consider this letter Palmetto Railways' notice under 49 C.F.R. § 1105.10 of its intent to file an application with OEA. Palmetto Railways looks forward to working with OEA through the NEPA process to evaluate the potential environmental impacts of the proposed project.

Ms. Phillis Johnson-Ball
September 6, 2016
Page 2 of 2

Thank you for your time and assistance. Please advise of any additional information that you need at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey McWhorter", written in a cursive style.

Jeffrey McWhorter
President and CEO

Exhibit 2



January 24, 2017

Victoria Rutson, Esq.
Director, Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

**Re: Docket number - FD 36095;
Camp Hall Commerce Park Rail Connection;
Request for Waiver of Six-Month Pre-filing Notice**

Dear Ms. Rutson,

Pursuant to 49 C.F.R. § 1105.10(c)(2), I am writing on behalf of Palmetto Railways to request that the Surface Transportation Board (the Board) waive the six-month pre-filing notice requirement of 49 C.F.R. § 1105.10(a) for Palmetto Railways in STB Docket FD 36095. Palmetto Railways intends to petition the Board for an exemption under 49 U.S.C.A. § 10901 to permit it to construct and operate approximately 23 miles of new railroad trackage (the Line). Palmetto Railways submits that a waiver of the 6 months' advance notice requirement is consistent with the regulations of the Office of Environmental Analysis (OEA) and the Board's policies.

For your information, Palmetto Railways is a division of the South Carolina Department of Commerce, a public agency and political subdivision of the State of South Carolina. Palmetto Railways intends to construct and operate an industrial rail line to connect the Camp Hall Commerce Park to the existing CSX Transportation, Inc. (CSXT) A-Line in Berkeley County, South Carolina. The Camp Hall Commerce Park comprises approximately 6,781 acres, of which 2,880 acres have been permitted by Berkeley County for development of Volvo Cars' first North American factory, which is expected to begin production by the end of 2018. An additional 1,387 acres of the Camp Hall Commerce Park is being permitted for industrial development by Santee Cooper. The Line is intended to bring industrial rail service to the entire Camp Hall Commerce Park. Industrial rail service is an additional transportation mode that enhances options for distribution and logistics for the industrial development and the customers that locate at the Camp Hall Commerce Park. In addition, the proposed industrial rail service will support the State of South Carolina and Berkeley County's infrastructure needs and will help alleviate highway congestion involving large commercial trucks.

The proposed Line will run approximately 20-30 miles through Berkeley County, depending on what route is ultimately selected as the proposed alternative. Regardless of the specific route, the nature of the general area (and a study area has been identified) means the Line will pass through a mix of commercial, residential, and silvicultural properties and the Line's assumed right-of-way will mostly be covered by forests, forested wetlands, and open water.

Because the majority of the alignment is in active silviculture areas, it will have minimal hazardous effects on potential environmental justice communities.

Regarding environmental impacts, movement of the Commerce Park traffic by rail instead of truck will be beneficial due to the reduced highway congestion and associated air and noise pollution and energy consumption. The Line is expected to potentially impact jurisdictional waters of the United States, including streams and wetlands. As such, the United States Army Corps of Engineers (USACE) is currently conducting an environmental review of the proposed project under Section 404 of the Clean Water Act (CWA) and the National Environmental Policy Act, 42 U.S.C.A. §§ 4321 *et seq.* (NEPA). Unavoidable wetland impacts along the project corridor will generally include fill and clearing impacts to wetlands and culvert, piping, and shade impacts to streams and jurisdictional ditches.

Please let me know if you have any questions. We greatly appreciate your assistance and look forward to working with you on this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff McWhorter", written in a cursive style.

Jeff McWhorter
President and CEO

Exhibit 3



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

February 3, 2017

Jeff McWhorter, President and CEO
Palmetto Railways
540 East Bay Street
Charleston, South Carolina 29403

**Re: STB Docket No. FD 36095, Palmetto Railways – Construction Exemption –
In Berkeley County, South Carolina; Waiver Approval of Six-Month
Prefiling Notice Requirement**

Dear Mr. McWhorter:

Pursuant to 49 C.F.R. § 1105.1(c), we are granting your request of January 24, 2017 for a waiver of the six-month prefiling notice generally required for construction projects under 49 C.F.R. § 1105.10(a)(1).

On November 30, 2016, the Surface Transportation Board's (Board) Office of Environmental Analysis (OEA) and the Office of Public Assistance, Government Affairs, and Compliance (OPAGAC) met with representatives from Palmetto Railways, the South Carolina Department of Commerce (SCDC), and the U.S. Army Corps of Engineers (USACE). Meeting participants included: Jeff McWhorter, Patrick McCrory, T. Ravenel, and Randy Lowell of Palmetto Railways; Jennifer Fletcher of SCDC; Travis Hughes and James Choate of the USACE; Victoria Rutson, Phillis Johnson-Ball, Joshua Wayland and Diana Wood of OEA; and Gabriel Meyers of OPAGAC.

At the meeting, you explained that Palmetto Railways – which was established in 1969 as an instrumentality of the State of South Carolina within the Division of SCDC to promote the economic viability of South Carolina by offering safe, efficient and cost-effective freight rail solutions, operates three railroad divisions – seeks to construct, operate and own an approximately 20-30-mile segment of new rail line in Berkeley County. The project would connect the existing 6,781-acre Camp Hill Commerce Park to the existing CSX Transportation, Inc. (CSXT) A-Line near the Santee Cooper Cross Generating Station. The proposed rail line would serve the entire commerce park, but most immediately, Volvo Cars' first North American factory, which is expected to begin production by the end of 2018 and Santee Cooper.

You further explained that the proposed rail line would provide an additional transportation mode for the Camp Hill Commerce Park, support the State of South Carolina and Berkeley County's infrastructure needs, and help alleviate highway congestion of large commercial trucks in the region. Palmetto Railways is also in the process of gathering information within the initial study area to assess potential environmental impacts that will be used to identify specific route alternatives, including the preferred alternative, pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 *et seq.* (NEPA). We understand, based on your description, that the project study area includes a mix of commercial, residential, and silviculture land uses and the assumed right-of-way would mostly be covered by forests, forested wetlands, and open water.

As we discussed at the meeting, the Board and USACE will be joint lead agencies in the development of the NEPA document. At the meeting, OEA provided a general overview of the Board's environmental review process, OEA's role in conducting the environmental review, and the role of third-party contractors. In addition, OEA discussed the importance of adequate public outreach, as well as the role of the public, including federal, state, and local agencies, parties of record, communities and other interested parties in the review process.

Based on the information from this initial meeting, OEA believes that it has adequate information and the applicant is sufficiently aware of the environmental process to grant this request. If we can be of further assistance, please contact Diana Wood or Joshua Wayland of my staff at 202-245-0302 or 201-245-0330, respectively.

Sincerely,



Victoria Rutson
Director
Office of Environmental Analysis

Exhibit 4

March 28, 2017

Victoria Rutson, Esq.
Director, Office of Environmental Analysis
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

**Re: STB Docket No. FD 36095, Palmetto Railways – Construction Exemption –
In Berkeley County, South Carolina; Request for Approval of Third Party
Consultant**

Dear Ms. Rutson,

We are writing to request your approval, in accordance with 49 C.F.R §1105.10(d), to retain an independent third-party consultant to work with your office to prepare the necessary environmental documentation associated with the proposed construction of a rail line by Palmetto Railways. Palmetto Railways intends to file a petition in STB docket number FD 36095 seeking authority from the Surface Transportation Board (the Board) to construct a line of railroad in Berkeley County, South Carolina.

Palmetto Railways proposes that ICF Jones and Stokes Inc. (ICF) be retained as the Office of Environmental Analysis's (OEA's) third-party consultant. ICF is among the third-party consultants pre-approved by the Board as qualified to conduct environmental analysis on behalf of OEA. We understand that ICF's work would be performed on behalf of, and at the direction of, the Board, pursuant to 49 C.F.R. §1150.10(d). Further, we understand that ICF would undertake this project in accordance with the Board's requirements for disclosure of any conflicts of interest and pursuant to an appropriate memorandum of understanding that would be entered among the Board, ICF, and Palmetto Railways. We can confirm that ICF is not presently engaged in any other projects for Palmetto Railways.

Sincerely,



Jeff McWhorter
President and CEO

Exhibit 5



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Environmental Analysis

April 3, 2017

Jeff McWhorter, President and CEO
Palmetto Railways
540 East Bay Street
Charleston, SC 29403

Re: STB Docket No. FD 36095, Palmetto Railways – Petition for Exemption – In Berkeley County, South Carolina; Third-Party Contractor Approval and Disclosure Statement

Dear Mr. McWhorter:

The Surface Transportation Board's Office of Environmental Analysis (OEA) is approving ICF Jones and Stokes, Inc. (ICF) as the independent third-party contractor for the above referenced proceeding, pursuant to 49 C.F.R. § 1105.10(d). ICF will assist OEA in preparing the appropriate environmental documentation in connection with the Palmetto Railways' prospective exemption petition to construct a line of railroad in Berkeley County, South Carolina.

We have attached a disclosure statement that you should forward to ICF to complete and return to us. As we previously discussed, OEA will direct, supervise, review and approve all environmental documents prepared by the third-party consultant in this proceeding.

If we can be of further assistance, please contact Diana Wood of my staff at 202-245-0302 or by email at Diana.Wood@stb.gov.

Sincerely,

Victoria Rutson
Director

Office of Environmental Analysis

Enclosure

SURFACE TRANSPORTATION BOARD

DISCLOSURE STATEMENT

On behalf of ICF Jones and Stokes, Inc., I certify that ICF Jones and Stokes, Inc. has no financial or other interests in the outcome of the prospective petition in STB Finance Docket 36095, Palmetto Railways – Petition for Exemption to construct a rail line in Berkeley County, South Carolina.

Signature: _____

Printed Name: _____

Title: _____

Date _____

Exhibit 6

**MEMORANDUM OF UNDERSTANDING
AMONG
SURFACE TRANSPORTATION BOARD,
U.S. ARMY CORPS OF ENGINEERS, CHARLESTON DISTRICT,
PALMETTO RAILWAYS,
AND ICF JONES AND STOKES, INC.**

RE: ENVIRONMENTAL ANALYSIS AND PREPARATION OF APPROPRIATE ENVIRONMENTAL DOCUMENTS RELATING TO THE CONSTRUCTION AND OPERATION OF A PROPOSED RAIL LINE BY PALMETTO RAILWAYS IN BERKELEY COUNTY, SOUTH CAROLINA

I. Introduction and Purpose

- A. Palmetto Railways (Applicant) intends to file a petition for exemption in STB Finance Docket No. 36095 with the Surface Transportation Board (Board) seeking exemption from the requirements of 49 U.S.C. § 10901 to construct and operate an approximately 25-mile rail line in Berkeley County, South Carolina (Proposed Project).
- B. In considering the Applicant's request for Board approval of the petition to construct and operate the rail line, the Board will consider the potential environmental impacts resulting from construction and operation of the rail line and any rail-related alternatives. The Board will be a joint-lead agency with the U.S. Army Corps of Engineers, Charleston District (Corps) for preparing the environmental documentation required for the project, either an Environmental Impact Statement (EIS) or Environmental Assessment (EA), as required by the National Environmental Policy Act of 1969 (NEPA).
- C. As may be pertinent here, the Corps is responsible for regulating the discharge of dredged or fill material into waters of the United States under Section 404 of the Clean Water Act. As a joint-lead agency, the Corps will prepare sections of the environmental document¹ in accordance with its regulations, policies, procedures and guidance. In accordance with 40 C.F.R. § 1502.5(b), the Applicant has requested that the Corps begin the NEPA process prior to submitting to the Corps an application for a Department of the Army (DA) permit for the Proposed Project.
- D. Pursuant to 40 C.F.R. § 1506.5(c), 49 C.F.R. §§ 1105.4(j), and 1105.10(d), the Board, through its Office of Environmental Analysis (OEA), has selected and the Applicant has agreed to engage, at the Applicant's expense, ICF Jones and Stokes, Inc. (the Contractor) as the Independent Third Party Contractor for this proposal. In accordance with Regulatory Guidance Letter No. 05-08 and 33 C.F.R. Part 325, Appendix B, the Corps has determined that the Contractor is fully acceptable to the Corps as the Independent Third Party Contractor for this proposal. The Contractor shall assist OEA and the Corps in conducting the environmental review and preparing the environmental documentation

¹ The terms "environmental documentation" and "environmental document(s)" embrace draft, supplemental, and final EAs, EISs, FONSI and any other reports, studies, surveys, or related documents.

related to the Applicant's proposal. The Contractor's scope of work, approach, and activities shall be under the sole supervision, direction, and control of OEA and the Corps. This Memorandum of Understanding (MOU) summarizes the relationship among the Contractor, the Applicant, OEA, and the Corps, as set forth in applicable regulations and Board policies regarding the conditions and procedures each party must follow in preparing all environmental documentation. The MOU does not supersede or amend, and is made expressly subject to, the requirements of NEPA, and, to the extent applicable, related environmental laws, and 49 C.F.R. Part 1105, 33 C.F.R. Part 325, Appendix B, and 40 C.F.R. Part 1500.

- E. The Applicant, the Contractor, OEA, and the Corps agree to work within the framework of this MOU to develop an efficient method to complete the environmental review for the proposed application. OEA and the Corps shall both maintain overall responsibility for the documentation, analysis, methodology, consultation, and mitigation related to the environmental review process. OEA and the Corps shall jointly direct, evaluate, oversee, and approve the environmental review process.

II. Document Process

OEA will prepare, in consultation with the Corps and on behalf of the Board, the draft environmental document (EA or EIS) for agency and public review. OEA and the Corps will independently draft mitigation, based on the review of potential environmental impacts of the project.

III. Agreement between the Applicant and the Contractor

- A. Any contract between the Applicant and the Contractor, and any subcontracts, shall be consistent with the provisions of the MOU.
- B. The terms of the MOU shall override any contradictory or conflicting terms regarding the scope and performance of any work to be conducted under any contract entered into between the Applicant and the Contractor; provided, however, that the foregoing shall not limit the rights of the Applicant and the Contractor to contract on terms which require the work to be performed cost-effectively.
- C. The contract between the Contractor and the Applicant shall specifically provide, and the Contractor shall represent, that (1) the Contractor and any subcontractors do not and shall not have any financial or economic interest in the Applicant or any entity or person directly or otherwise affiliated with the Applicant except for payment for services rendered in connection with the preparation of all required environmental documentation, and except for services rendered pursuant to other agreements not prohibited by the MOU, and (2) there is no agreement between the Applicant, or any other person or entity and the Contractor regarding future employment that is contingent upon the Contractor's performance under this contract. The Contractor shall concurrently execute a disclosure statement as mandated by the regulations of the Council on Environmental Quality (CEQ) (40 C.F.R. 1506.5(c)) and submit it to OEA, the Corps, and the Applicant, before

beginning any work under OEA's direction. It is understood that the Contractor and any subcontractors have not been employed to conduct any environmental analysis related to the petition for the Applicant, or for any other person or entity, and, therefore, can be retained as independent third party contractor(s).

D. Restrictions on other work:

- (1) No employee of the Contractor or employees of any subcontractor, who is a part of the Contractor's core team committed to the environmental review process for the application, shall engage in (a) other work for the Applicant or (b) any work, relating to the petition, for any other party to this proceeding during the course of the proceeding; and
- (2) No other employee of the Contractor or other employee of any subcontractor shall, unless OEA and the Corps are provided prior notice of and approves such work, engage in (a) other work for the Applicant or (b) any work, relating to the petition before the Board, or any cooperating agencies that may elect to participate in this process, or any other party to this proceeding during the course of this proceeding.

E. The Applicant shall bear the costs incurred by the Contractor, and by any subcontractor approved by OEA in accordance with Section III.A, in preparing the required environmental documentation to implement NEPA and related environmental laws under the direction of OEA and the Corps.

F. Any contract between the Contractor and the Applicant shall specifically limit any remedies available to the Contractor and subcontractors upon termination of the contract to affirmatively relieve the United States of America, the Board, the Corps, and any officer, agent, or employee, from any liability from terminating the contract.

IV. Contractor Responsibilities

A. The Contractor may engage subcontractors to perform work related to environmental review of the applications before each agency, subject to the provisions of Section III.C and Section III.D. All work performed by the Contractor or any subcontractors shall be under the sole direction, control, supervision, and final approval of OEA and the Corps. Contractor and subcontractors, if any, will act as the agent(s) of the Board and the Corps, not the Applicant, in performing its/their duties.

B. The Contractor shall provide:

- (1) Appropriate expertise in the areas of environmental concern (including, but not limited to, air quality, wetlands, biological resources, geotechnical resources, hydrology, land use, safety, noise, social and economic, and cultural/historic resources);

- (2) A good working knowledge of environmental laws, applicable laws and regulations (including environmental regulations) administered or promulgated by the Board, the Corps, CEQ regulations and guidelines, other applicable federal regulations, state laws and regulations, and applicable local ordinances and regulations;
- (3) The capacity to perform environmental impact analysis and prepare appropriate environmental documentation;
- (4) Thorough, readable, technically sound, and informative environmental documents, as well as related charts, maps, diagrams, etc.;
- (5) Representatives to attend and/or facilitate meetings with federal, state, regional, and local agencies, other interested parties, and the Applicant for the purpose of exchanging and obtaining information, explaining the petition and related environmental concerns and impacts, and receiving comments in preparing the required environmental documentation;
- (6) Expertise in data management; and
- (7) Assistance to OEA and the Corps in ensuring that the data collection, analyses, and methodologies for the environmental documents are complete, accurate, and relevant to OEA's needs for the environmental review of the petition under NEPA and the Corps' needs for the environmental review of the proposal under NEPA.

C. The Contractor shall maintain and provide OEA and the Corps upon request:

- (1) Adequate record-keeping and reporting systems to assure preservation of all data gathered, including surveys, studies, etc.;
- (2) Logs summarizing all telephone calls, meetings, document reviews, and other substantive communications with OEA, the Corps, the Applicant, local governments, governmental agencies, citizens' groups, and any other interested parties; and
- (3) Lists of all agencies, other railroads, citizens' groups, organizations, and individuals (including their respective addresses and telephone numbers) contacted in preparing the environmental documentation.

D. The Contractor shall perform the work in a timely, responsive, satisfactory, and cost-effective manner, pursuant to a work schedule developed with OEA and the Corps in coordination with the Applicant and approved by OEA and the Corps.

E. The Contractor shall assist OEA and the Corps in coordinating the exchange of all relevant environmental information and technical data/studies related to the petition and all required environmental documentation among OEA staff, Corps staff, the Applicant's staff and representatives, the Contractor, and any subcontractors.

- F. The Contractor will submit directly to OEA and the Corps all work the Contractor performs in preparing all required environmental documentation, studies, surveys, etc. The Contractor, and any subcontractors, shall not disclose the results of their work nor release any of the underlying work papers, drafts, or other materials prepared under the contract to anyone, including the Applicant, without both the Corps and OEA's express authorization. In no case shall the Applicant be provided the opportunity to modify or edit the Contractor's work prior to submission to OEA and the Corps, without OEA and the Corps' express authorization.
- G. The Contractor shall follow the directions and instructions of OEA and the Corps, and incorporate them into the environmental document(s) in a timely and responsive manner. The Contractor shall submit preliminary and final drafts of any documents to OEA and the Corps for final review and approval.
- H. The Contractor shall provide to both OEA and the Corps access to and the right to review all procedures and underlying data used in the Contractor's development and preparation of all environmental documents. This includes, but is not limited to, field reports/surveys, technical studies and analyses, subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be reflected in draft, supplemental, or final environmental documents submitted to OEA and the Corps.
- I. The Contractor, and any approved subcontractors, shall cooperate fully with OEA and the Corps in organizing, participating in, and conducting any public workshops, informational meetings, and other meetings, as OEA and the Corps determine are necessary, to foster public understanding of and/or participation in the environmental review process, and to assess potential environmental impacts and develop mitigation measures related to the petition.
- J. The Contractor will assist OEA and the Corps in reviewing comments received during the environmental review process, will draft a summary of rail-related comments, and will coordinate analysis of these comments with OEA and the Corps.
- K. The Contractor shall assist OEA and the Corps in preparing the required environmental documentation, environmental recommendations, selection of alternatives, and development of mitigation measures.
- L. The Contractor's Project Director, Project Manager, other technical experts, as appropriate, shall be available to attend all meetings, briefings, consultations, and site visits as OEA and the Corps deem necessary. The Project Director and the Project Manager shall devote as much time to environmental review of the petition as is necessary to assure the Contractor's performance of its responsibilities under this MOU. This work commitment will extend for the entire time necessary to complete the environmental review for the petition.
- M. Except as specifically authorized by OEA and the Corps, the Contractor and any of its subcontractors shall refer all media/press inquiries directly to OEA and the Corps.

- N. As needed, the Contractor will provide technical expertise and administrative support to OEA during preparation of the Board's decision and in addressing any environmental issues arising in the Board's consideration of this proceeding. In the event of any appeal from a Board decision in this proceeding, the parties hereto shall at that time determine the need for and terms of the Contractor's services in connection with judicial review of that decision.
- O. The Contractor shall provide any administrative and technical support that may be needed to assist OEA and the Corps in reviewing, summarizing, and responding to environmental issues arising after issuance of the final environmental documentation, including in connection with the Board decisions, correspondence, filing before the Board and by the Board in court in connection with any judicial review of the Board's decisions, and other inquiries involving environmental issues associated with the Applicant's proposal.

V. Applicant Responsibilities

- A. The Applicant shall retain the Contractor to assist OEA and the Corps in preparing all required environmental documentation and services, as that assistance and its costs are defined by a contract to be negotiated and executed by the Applicant and the Contractor, and in the Work Plan described in Section VII.
- B. The Applicant, including its staff and representatives, shall provide to OEA, the Corps, and the Contractor any requested supportive expertise, resources, data, and technical capabilities necessary to undertake the environmental analysis, subject to the right of the Applicant to advise OEA and the Corps of any request received from OEA or the Corps or the Contractor that the Applicant believes either is not germane to matters appropriately reviewed in the environmental review process, is contrary to applicable statutes and regulations, would impose an extraordinary burden on the Applicant, or is subject to the right of the Applicant to maintain confidentiality as to proprietary, privileged, or other information which is not otherwise subject to disclosure. In the event that the Applicant so advises OEA or the Corps, OEA and the Corps shall jointly determine whether the request is appropriate and shall so advise the Applicant and the Contractor of its determination. OEA and the Corps shall, to the extent possible, maintain the confidentiality of any information if so requested by the Applicant.
- C. The Applicant shall cooperate fully with OEA and the Corps in organizing and participating in any public workshops, hearings, and meetings, as OEA and the Corps determines are necessary to (1) foster public understanding and/or participation in the environmental review process, and (2) assess potential environmental impacts and mitigation measures related to the petition.
- D. With respect to all reports, analyses, and documents, including drafts, supplements, and final copies of the environmental documents, the Applicant shall be responsible for the Contractor's administrative and clerical costs, as well as the costs of graphics, maps, layouts, mailing, and printing, as those costs are defined by a contract to be negotiated and executed by the Applicant and the Contractor. The Applicant shall, however, have

the option of directing that any printing of the environmental documentation be performed by a private entity, rather than OEA and the Corps. The Applicant shall be solely responsible for the cost of preparing and providing to OEA and the Corps the appropriate number of copies of all required environmental documentation.

- E. The Applicant shall provide complete, accurate, relevant, and timely responses to all reasonable requests for information pertaining to the petition to the Board, the Operating Plan, and the environmental aspects and effects of the proposed rail construction and operation.
- F. In the event of any litigation resulting from the environmental analysis in this proceeding, the Corps and OEA shall at that time determine the need for and terms of the Contractor's services in connection with any litigation.

VI. Board/OEA and Corps Responsibilities

- A. The Board and the Corps are individually responsible for ensuring compliance with the requirements of NEPA and other applicable environmental statutes and regulations by preparing appropriate environmental documentation.
- B. OEA shall:
 - (1) Direct, review, and approve all phases of preparing all required environmental documentation, including the work of the Contractor, using OEA's best efforts to ensure that the work is reasonably necessary to conduct the environmental review process regarding the proceeding and the work is within the scope of NEPA requirements. For example, OEA shall ensure that the Contractor considers existing data and environmental analyses available from the Applicant, OEA, and other sources, and that the Contractor does not duplicate work already done, unless OEA determines that the existing data are not adequate for use in preparing the environmental documentation;
 - (2) Designate appropriate staff to review and approve all work as it is developed and completed;
 - (3) Ensure that its representatives attend meetings, as needed, with federal, state, regional, and local agencies, and other interested parties, as well as any public hearings or meetings, to exchange information, explain the petition and related environmental concerns and impacts, obtain technical input, and receive comments in preparing all required environmental documentation; and
 - (4) Coordinate, with the Contractor's assistance, the exchange of information among any planning, design, or construction engineers or technical staff employed by the Applicant and the Contractor.
- C. The Corps shall:
 - (1) Direct, review, and approve all phases of preparing all required environmental documentation, including the work of the Contractor, using the Corps' best efforts to ensure that the work is reasonably necessary to conduct the environmental review process regarding the proceeding and the work is within

- the scope of NEPA requirements in accordance with the Corps Regulatory authority;
- (2) Designate appropriate staff to review and approve all work as it is developed and completed;
 - (3) Ensure that its representatives attend meetings, as needed, with federal, state, regional, and local agencies, and other interested parties, as well as any public hearings or meetings, to exchange information, explain the petition and related environmental concerns and impacts, obtain technical input, and receive comments in preparing all required environmental documentation;
 - (4) Coordinate, with the Contractor's assistance, the exchange of information among any planning, design, or construction engineers or technical staff employed by the Applicant and the Contractor;
 - (5) Ensure that the environmental documentation jointly prepared by the Corps and OEA adequately addresses the requirements of the Corps' Regulatory Program and associated laws and regulations (i.e., 33 CFR Parts 320-332).
- D. OEA and the Corps will review the work of the Contractor to ensure that the Board's responsibilities under NEPA and related environmental laws and regulations are being satisfied. As each portion of any draft or final document is completed, OEA and Corps staff shall review and approve that portion and those tasks completed, and/or direct further work with regard to that portion or task.
- E. OEA and the Corps will monitor the Contractor to ensure that the Contractor is making adequate progress toward meeting specific time frames established in the Work Plan described in Section VII. If OEA determines these commitments are not being met, it will notify the Applicant of its findings. It will be the responsibility of OEA and the Corps to recommend any necessary corrective action to be taken under this MOU.
- F. In all instances involving questions concerning the content or relevance of any material (including all data, analyses, charts, and conclusions) prepared by the Contractor, OEA and the Corps shall make the final determination on including, deleting, or revising any such material in the environmental documents.
- G. To coordinate the preparation of all required environmental documentation, and to verify petition-related data, OEA and the Corps may hold joint meetings with the Applicant and the Contractor. As necessary, OEA and the Corps may exclude the Applicant from participation. OEA and the Corps may also consult directly with appropriate federal, state, and local officials, and other interested parties. The Applicant shall provide complete, accurate, relevant, and timely responses to all reasonable requests for information pertaining to the petition to the Board and the environmental aspects and effects of the proposed rail construction and operation.
- H. OEA and the Corps, with the assistance of the Contractor, will be responsible for organizing and conducting any public workshops or meetings that may be necessary in preparing environmental documents during the environmental review process.
- I. OEA and the Corps, with the assistance of the Contractor, will receive all relevant comments submitted during the environmental review process and comment period. At the close of any public review and comment period, OEA and the Corps, in consultation with the Contractor, shall identify the issues and comments that will require a response

from the Board or the Corps. OEA and the Corps may direct these comments to the Applicant and to the Contractor, as appropriate, to be included in the final environmental document. OEA and the Corps may modify these responses as appropriate.

- J. OEA, with the assistance of the Contractor, shall prepare final recommendations for the Board.
- K. OEA and the Corps shall retain responsibility for deciding the environmentally preferable alternative, and any mitigation measures to be included in the final environmental document.

VII. Work Plan

- A. The Contractor, in consultation with OEA, the Corps, and the Applicant, shall submit a draft Work Plan to OEA and the Corps for preparing the required environmental documentation within thirty (30) days after all parties have signed this MOU. The draft Work Plan shall contain at least the following elements:
 - (1) A description of all work to be performed (including preparing and sending consultation letters; participating in public and agency meetings; outlining and drafting environmental documents; reviewing, analyzing, and summarizing public comments, conducting analyses, etc.);
 - (2) The projected schedule for completing the various tasks described;
 - (3) Identification of the Contractor's staff members who will be responsible for preparing, analyzing, and reviewing the work; and
 - (4) An outline of the environmental analysis.
- B. Following receipt of the draft Work Plan, OEA and the Corps, in consultation with the Contractor and the Applicant, shall finalize the Work Plan in a timely manner.
- C. Subsequent to consultation with the Contractor and the Applicant, OEA and the Corps may amend the Work Plan from time to time as the environmental review of the Board petition may necessitate. The parties hereto shall consult at least once every two weeks to confirm that the work is being performed in the most efficient and cost-effective manner and to consider possible measures to improve the efficiency and cost-effectiveness of the work.

VIII. Disputes

Disputes between the parties may arise regarding the environmental review process, including approach, methods, analysis, conclusions, and performance of the obligations of the parties to this MOU. The parties agree to seek resolution of disputes among the individuals or parties directly involved. In the event that resolution is not achieved, the parties agree to make further attempts at resolution before bringing the dispute to the next supervisory level, and all individuals or parties directly involved shall be notified in the case of such a referral to the next supervisory level. In addition, the parties may seek independent facilitation or mediation to assist in resolving disputes in the event that resolution is not achieved.

IX. Nonperformance and Termination

- A. The Applicant or the Contractor shall notify OEA and the Corps of any concerns either party might have with respect to the other party's performance under the contract between the Applicant and the Contractor or this MOU. All parties will attempt to resolve, in good faith, any disputes or disagreements.
- B. If OEA determines that either the Contractor or the Applicant is not adequately performing its responsibilities and duties in accordance with this MOU, OEA will discuss its concerns with the Contractor and the Applicant. If OEA and the Corps' concerns cannot be satisfactorily resolved, OEA and the Corps will notify the Applicant that OEA and the Corps are jointly removing the Contractor for cause, or direct the Applicant to comply with the MOU. Upon removal of the Contractor, OEA and the Corps shall endeavor to replace the Contractor with another qualified contractor as soon as practicable.
- C. Both the Applicant and the Contractor shall immediately notify OEA and the Corps of any attempt by either party to modify or terminate the contract between the Applicant and the Contractor. Termination of the contract shall be subject to OEA and the Corps' prior approval, after consultation with the Applicant and the Contractor. Upon approving termination of the contract, OEA and the Corps shall endeavor to replace the Contractor with another qualified contractor as soon as practicable. Notwithstanding the foregoing, the Applicant may terminate the contract without OEA and the Corps' approval in the event that it withdraws notice of intent or petition.

X. Modification

This MOU may be modified only by written amendment executed by OEA, the Corps, the Applicant, and the Contractor.

PALMETTO RAILWAYS

ICF JONES AND STOKES, INC.

By:

Jeffrey McWhorter

By:

Title: *President + CEO*

Title:

Date: *05-17-17*

Date:

- A. The Applicant or the Contractor shall notify OEA and the Corps of any concerns either party might have with respect to the other party's performance under the contract between the Applicant and the Contractor or this MOU. All parties will attempt to resolve, in good faith, any disputes or disagreements.
- B. If OEA determines that either the Contractor or the Applicant is not adequately performing its responsibilities and duties in accordance with this MOU, OEA will discuss its concerns with the Contractor and the Applicant. If OEA and the Corps' concerns cannot be satisfactorily resolved, OEA and the Corps will notify the Applicant that OEA and the Corps are jointly removing the Contractor for cause, or direct the Applicant to comply with the MOU. Upon removal of the Contractor, OEA and the Corps shall endeavor to replace the Contractor with another qualified contractor as soon as practicable.
- C. Both the Applicant and the Contractor shall immediately notify OEA and the Corps of any attempt by either party to modify or terminate the contract between the Applicant and the Contractor. Termination of the contract shall be subject to OEA and the Corps' prior approval, after consultation with the Applicant and the Contractor. Upon approving termination of the contract, OEA and the Corps shall endeavor to replace the Contractor with another qualified contractor as soon as practicable. Notwithstanding the foregoing, the Applicant may terminate the contract without OEA and the Corps' approval in the event that it withdraws notice of intent or petition.

X. Modification

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PALMETTO RAILWAYS

ICF JONES AND STOKES, INC.

By:

Title:

Date:

By:

Title:

Date:

Jodi Young
Manager, Contracts
05/17/2017

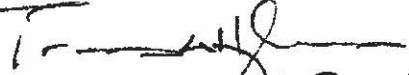
SURFACE TRANSPORTATION BOARD

By:

Title:

Date:

U.S. ARMY CORPS OF ENGINEERS,
CHARLESTON DISTRICT

By: 

Title: *Division Chief, Regulatory*

Date: *19 May 2017*

SURFACE TRANSPORTATION BOARD

By:

Title:

Date:

Victoria R. Wilson
Director, OFFICE of ENVIRO.
ANALYSIS
MAY 18, 2017

U.S. ARMY CORPS OF ENGINEERS,
CHARLESTON DISTRICT

By:

Title:

Date:

#E-25870

SURFACE TRANSPORTATION BOARD

DISCLOSURE STATEMENT

On behalf of ICF Jones and Stokes, Inc., I certify that ICF Jones and Stokes, Inc. has no financial or other interests in the outcome of the prospective petition in STB Finance Docket 36095, Palmetto Railways – Petition for Exemption to construct a rail line in Berkeley County, South Carolina.

Signature: _____



Printed Name: Jodi Young

Title: Manager, Contracts

Date 04/03/2017