

FLETCHER & SIPPEL LLC

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ENTERED
Office of Proceedings
September 20, 2019
Part of
Public Record

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September 20, 2019

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: **Docket No. FD 33990**
C&C Railroad, Inc. — Operation Exemption — Centerpoint
Properties, L.L.C.

REQUEST FOR LEAVE TO LATE FILE

Dear Ms. Brown:

Enclosed for filing on behalf of C & C Railroad, LLC (“C&C”) is a Reply signed and dated as of September 13, 2019. C&C hereby requests that the Surface Transportation Board (the “Board”) grant C&C leave to file out of time.

The subject Reply was due by or before September 18, 2019. The Reply had been completed and was set to be filed last Friday, the 13th of September, and it was entrusted to the undersigned’s administrative assistant who had been instructed to file toward the end of the work day on the 13th, since the undersigned was away from the office on vacation, and would remain so until September 19, 2019, the day after the applicable deadline. Unfortunately, the administrative assistant assigned to this task forgot about the assignment.

C&C’s counsel was on vacation with very limited access to email or Internet and, thus, was unable to confirm whether the filing had been accomplished as instructed. The failure timely to file the attached Reply was discovered this morning, when C&C determined that, although Union Pacific Railroad Company (“UP”) appears to have filed its own reply filing in a timely fashion (via e-filing) on September 18, 2019, UP appears not to have served a copy of its reply filing upon C&C. (C&C cannot find any contemporary record that UP transmitted its reply filing electronically to C&C counsel, and C&C has not yet received a hard copy of UP’s filing, but has discovered that UP’s filing was posted on the Board’s website on the 18th).

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We regret the error and request that the Board grant C&C leave to file out of time.

Respectfully submitted,

A handwritten signature in black ink, reading "R.A. Wimbish". The signature is written in a cursive, flowing style.

Robert A. Wimbish
Attorney for C & C Railroad, LLC

RAW/ah
Enclosure

cc: All parties of record

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Re: **Docket No. FD 33990**
C&C Railroad, Inc. — Operation Exemption — Centerpoint
Properties, L.L.C.

Dear Ms. Brown:

In keeping with the order of the Acting Director of the Surface Transportation Board's Office of Proceedings issued in this proceeding on July 30, C & C Railroad, LLC¹ ("C&C") hereby tenders its reply to the verified information (the "UP-VI") supplied to the Board by Union Pacific Railroad Company ("UP") on August 29, 2019.

C&C need not linger on the information contained in the UP-VI – it largely speaks for itself and warrants only a brief reply from C&C. To begin with, C&C and UP appear to agree that, at some point prior to (or possibly during) 1998, the tracks that had connected to C&C's tracks had been removed. There had been, and until fairly recently before C&C's filing was, a connection. The UP-VI includes a map on which it has highlighted "where [UP] believes a connection between the Lines and [UP] tracks would have existed."²

The evidence of record includes the Zone Track and Spot book maps introduced by UP and maps tendered at previous phases in this proceeding upon which UP and C&C each has provided graphic depictions of the southeastern boundary of The Custom Companies, Inc. ("Custom") facility (also the southeastern boundary of the track facilities that C&C is entitled to operate).³ Those maps indicate that the connecting tracks that now are missing were located on

¹ C&C Railroad, Inc., is now C&C Railroad, LLC. C&C Railroad, Inc. – Reincorporation Exemption – C&C Railroad, LLC, Docket No. FD 34062 (STB served Jul. 23, 2001).

² UP-VI at 1 and Exhibit 2.

³ See C&C Verified Supplemental Information at Exhibit A; UP Petition to Revoke, Verified Statement of Keith E. Walter at 3 (depicting the Custom facility as the "Wardex Property," and depicting the southeastern boundary line of the same).

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UP property and were UP, in fact, UP tracks. C&C has explained before that it does not know why the connecting tracks were removed or by whom this was accomplished, but C&C believes that the tracks were removed at the behest of (and most likely by) UP.⁴ It is therefore of concern that UP cannot explain – (a) when the connecting trackage was removed; (b) why the connecting trackage was removed; (c) who removed the connecting trackage; and (d) whether UP would have been willing to restore the connecting Track.

C&C was established as a logical outgrowth of Custom's transportation logistics services business. Neither Custom nor C&C has removed any of the track within the scope of the Custom leasehold since C&C secured common carrier authority in 2001. C&C's invocation of the Board's class exemption procedures to serve as a rail common carrier was genuine and business-driven, and there is no evidence to suggest that C&C misled or intended to deceive the Board as UP alleges. Finally, the impetus behind UP's petition to reject or nullify C&C's common carrier exemption is UP's desire expeditiously to remove a tenant (and subtenant) within its Global 2 facility whose lease has expired, and not for any other reason. Custom and C&C understand UP's objectives, and they are willing to cooperate with a transition under which each company would expect to depart the premises by the end of the year, upon the completion of the construction of a new facility currently underway. But an orderly transition away from Custom's current leasehold (and C&C's sub-leasehold) is important. Without such an ordered transition, Custom and its transportation customers would face business disruption. If UP were cognizant of that, and acted accordingly, this proceeding could have been avoided.

Once again, C & C has not defrauded the Board, nor has it misled its way to the class exemption it holds. Its exemption authority should not be revoked or nullified.

Respectfully submitted,



Robert A. Wimbish
Attorney for C & C Railroad, LLC

cc: All parties of record

⁴ For that matter, C&C has explained that there is no evidence to suggest that, at the time C&C filed for common carrier authorization, UP and C&C could not have reconnected their tracks, or that UP was unwilling to do so.