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September 23, 2019

Ms. 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
September 23, 2019
Part of
Public Record

Re: **Docket No. AB-55 (Sub-No. 794X), CSX Transportation, Inc.—Abandonment
Exemption—in Pinellas County, FL**

Dear Ms. Brown:

Attached for efilng is CSX Transportation, Inc.'s Response to Motion to Compel that
was filed by the City of St. Petersburg, FL.

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

Sincerely yours,

/s/ *Louis E. Gitomer*

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 794X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN PINELLAS COUNTY, FL

RESPONSE TO MOTION TO COMPEL

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INC.

Dated: September 23, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 794X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
PINELLAS COUNTY, FL

RESPONSE TO MOTION TO COMPEL

CSX Transportation, Inc. (“CSXT”) responds in opposition to the Motion to Compel filed by the City of St. Petersburg (the “City”) on September 9, 2019 (the “Motion”). Contrary to the numerous misleading citations in the Motion, the City is not entitled to discovery under the rules of the Surface Transportation Board (the “Board”).

CSXT filed a notice of exemption pursuant to the class exemption at 49 C.F.R. § 1152.50 for CSXT to abandon an approximately 0.86-mile rail line on the Clearwater Subdivision, between milepost ARE 897.57 and milepost ARE 898.43, in St. Petersburg, Pinellas County, FL (the “Line”) on August 20, 2019 (the “Notice”). The Rail Exemption Procedures at 49 CFR Part 1121 “apply to notices of exemption.” 49 CFR 1121.1.

The City has not filed a petition to revoke the exemption. “Discovery may begin upon the filing of the ... petition for revocation of an exemption.” 49 CFR 1121.2. The rule is very specific “In petitions to revoke an exemption, a party must indicate whether it is seeking discovery. If it is, the party must file its discovery requests at the same time it files its petitions to revoke.” *Id.* The City has not complied with the rules for obtaining discovery in a proceeding that originated with a notice of exemption. The email sent by counsel on August 28, 2019 was

not appropriate for commencing discovery. Therefore, the City is not entitled to discovery and CSXT requests that the Motion be denied as moot.

Even if the City were entitled to seek discovery, which it is not, the City has not demonstrated that it requires discovery. Certainly, the City cannot credibly contend that it intends to oppose the abandonment since it is seeking a waiver in order to file an adverse abandonment of the Line. Such a claim would merely demonstrate bad faith and an abuse of the Board's procedures. See *City of St. Petersburg, Fla.-Adverse Abandonment-CSX Transportation, Inc. in Pinellas County, Fla.*, Docket No. AB-1289, Petition for Waiver filed July 23, 2019.

The City contends that an email sent on August 28, 2019 (Exhibit to the Motion) was a discovery request under the Board's rules.

The City's discovery request did not accompany a petition to revoke the exemption and does not meet the Board's requirement for producing documents. The Board requires that: "Any request filed pursuant to this rule should set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The request should specify a reasonable time, place, and manner of making the inspection and performing the related acts." 49 CFR 1114.30(b). The City did not describe the documents with "reasonable particularity." The City merely requested "title documentation" without defining the term. In addition, the email did not establish a date for production. Instead, the City waited a mere 12 days to file the Motion.

In the Motion at pages 3-4, the City alleges four bases for seeking discovery, none of which are valid.

First, the City refers to a "Legislature" and 49 CFR 1152.20 as requiring disclosure. CSXT does not know what Legislature the City is referring to. The cited section refers to the

Board's reservation of the right to adopt varying standards for determining lines "potentially subject to abandonment". There is no reference to discovery in 49 CFR 1152.20.

Next, the City, as an adjoining landowner claims that it needs to determine its exposure as a result of the abandonment proposed by CSXT or that the Line may contain "federally granted rights-of-way". It is curious that the City would wait until CSXT filed the Notice to become concerned about exposure from an abandonment or federally granted rights-of-way when over seven weeks earlier the City had started an adverse abandonment proceeding without making such a determination. Indeed, it is even more grievous when the City itself has noted that the documents it seeks are "publicly available". Motion at 4. The City should know its exposure and if it does not, it should make use of the publicly available documents.

The City also contends that it needs discovery to ascertain "the potential for public use and trail use as well as reactivation for non-freight uses." Motion at 4. But this argument does not justify discovery. CSXT adopts its arguments from the preceeding paragraph concerning the City's lack of advance diligence in seeking an adverse abandonment. Moreover, the quality of title does not effect the ability to convert a railroad line into a trail. "Section 1247(d) preempts State laws that would otherwise result in extinguishment of easements for railroad purposes and reversion of rights-of-way to abutting landowners." *Rail Abandonments-Use of Rights-Of-Way as Trails*, 2 I.C.C.2d 591, 596 (1986).

Finally, the City argues that "the City's position relative to the exemption request may be fundamentally impacted based on such documentation." Motion at 4. Again, the City's argument appears meritless given that it was willing to proceed with an adverse abandonment application without first determining whether it would be impacted through inspection of public title records. The quality of title is not one of the criteria that the Board reviews in determining whether to

allow a notice of exemption to go into effect. In addition, the quality of title is not an issue in determining whether to grant a request for trail use. The criteria for trail use are set forth in 49 CFR 1152.29, and title is not one of the criteria.

None of these insufficient arguments demonstrate the relevance of the title documents to the notice of exemption proceeding or a trails use request.

CSXT respectfully requests the Board to deny the Motion.

Despite the failure of the City to make its case, CSXT is willing to produce valuation maps and deeds for the City to review at CSXT's offices at a mutually convenient time during CSXT's business hours, subject to the City obtaining an appropriate protective order from the Board.

Respectfully submitted,

/s/ *Louis E. Gitomer*

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: September 23, 2019

CERTIFICATE OF SERVICE

I certify that I have this day served copies of document upon all parties of record in this proceeding, by email.

/s/ *Louis E. Gitomer*

Louis E. Gitomer
September 23, 2019