



## OFFICE OF THE CITY ATTORNEY

ENTERED  
Office of Proceedings  
September 9, 2019  
Part of  
Public Record

September 9, 2019

Chief  
Section of Administration  
Surface Transportation Board  
395 E Street, S.W  
Washington, D.C. 20423-0001

Re: Docket No. AB-55  
Motion to Compel  
CSX Transportation Inc. – Abandonment Exemption in Pinellas County, FL

Dear sir or ma'am:

Please find the attached Motion to Compel in the above referenced proceeding. The Petition has been efiled and served by email on all parties designated in the Certificate of Service.

If you have any questions about this matter, please do not hesitate to contact our office.

Very truly yours,

**/s/Bradley S. Tennant**

Bradley S. Tennant  
Assistant City Attorney

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Before the  
SURFACE TRANSPORTATION BOARD  
Washington, D.C. 20423

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

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

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MOTION TO COMPEL DISCOVERY FROM CSX TRANSPORTATION, INC. OR IN THE  
ALTERNATIVE, MOTION TO REJECT ABANDONMENT EXEMPTION

The City of St. Petersburg, FL (“City”), by and through the undersigned counsel, files this Motion to Compel Discovery from CSX Transportation, Inc. or, In the Alternative, Motion to Reject Abandonment Exemption. In support thereof, the City states as follows:

**I. SUMMARY**

Petitioner CSX Transportation, Inc. (“CSXT”), has failed to respond for a request for documents from the City<sup>1</sup>. The City’s request is reasonable, and CSXT has offered no reason to not produce such documents. Because the City is entitled to such under 49 CFR § 1121.2, the Surface Transportation Board (“Board”) should require CSXT to produce these documents, or reject the Notice entirely.

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<sup>1</sup> 49 CFR § 1121.2 states that “Discovery may begin upon the filing of the petition for exemption or petition for revocation of an exemption . . .” Though the same section also states a request for discover must be made concurrently with certain filings, no such limitation is given for respondents to a filing. Furthermore, pursuant to 49 CFR § 1114.21, “[a]ll discovery procedures may be used by parties without filing a petition and obtaining prior Board approval.” Accordingly, the City sent the request for discovery directly to CSXT’s authorized representative. It is unclear whether the City’s filings fall under the category of “public comment” set forth in 49 CFR § 1121.4(a).

## II. FACTS

CSXT has filed a Verified Notice of Exemption, entered on August 20, 2019, in the above captioned matter (“Notice”). In the second paragraph of the Notice, CSXT states that “Based on the information in possession of CSXT, the Line does not contain federally granted rights-of-way. Any documentation in the railroad’s possession will be made available promptly to those who request it.” Additionally, Paragraph 3(e)(4) of the Notice states “If the applicant is aware of any restriction on the title to the property, including any reversionary interest, which would affect the transfer of title or the use of property for other than rail purposes, this shall be disclosed. CSXT believes that the property proposed for abandonment is suitable for other purposes, but may be subject to reversionary interest that may affect transfer of title for other than rail purposes.”

On or about August 28, 2019, the City sent an email to CSXT’s authorized representative, Louis E. Gitomer, requesting documents pertaining to CSXT’s title to the railroad segment in question (attached as Exhibit “A”). Neither CSXT nor Mr. Gitomer responded to this request. To date, the requested documents – nor any documents – have been produced to the City<sup>2</sup>. To date, CSXT has not filed an objection or sought a protective order.

## III. ARGUMENT

Pursuant to Board regulations, including but not limited to 49 CFR §§ 1114.21, 1114.31, and 1121.2, federal and Board rules of discovery are applicable to abandonment and exemption requests (*see also e.g. Order of Presiding Administrative Law Judge Granting Motion to Withdraw Motion to Compel and Cancelling Discovery Status Conference*, STB Docket No. 1258 and *Decision on Motion for Protective Order*, STB Docket No. AB 290 (sub-No. 117X)). The City

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<sup>2</sup> Pursuant to 49 CFR § 1121.2(e), “Unless otherwise specified in the decision, an exemption generally will be effective 30 days from the service date of the decision granting the exemption.” Based on the relative timeframe, the City believes the 10-day timeframe in 49 CFR § 1114.31(a) applies.

requested title documentation for the subject line, including those specifically related to the reversionary interests referenced in the Notice. According to the Notice, CSXT has such documentation and, as it is required to be disclosed, it is relevant to the Notice.

The City has requested such documentation for several reasons. First, it is relevant to the abandonment of the line, as evidenced by the Notice. As the Legislature deemed such information important to all impacted under the 49 CFR § 1152.20, they determined it to be a requirement for disclosure. Accordingly, the City is obviously entitled to such. Furthermore, under the plain language of the Notice, CSXT has obligated itself to turn over this documentation. They should be bound by such.

Second, it is relevant for the City to determine its exposure resulting from an abandonment, particular insofar as the City is the primary adjoining property owner and thus the largest potential user of the rail. The terminus of the line sought to be abandoned abuts one of the City's largest redevelopment projects – 80 acres, formerly used for industrial uses, in the dense, urban City core, which is currently utilized as a baseball stadium and related parking for the Tampa Bay Rays. Redevelopment is not speculative – it has already commenced with master plans created and public outreach ongoing. Accordingly, as the City works to develop the parcel for residential, commercial, and/or industrial uses, the integrity of the line (potentially for passenger or freight service) is of paramount importance. The position of the City would therefore be relevant to the calculus applied by the Board in determining if abandonment is appropriate.

Furthermore, though CSXT says the property contains no federally granted rights-of-way, the City would like proof of such. Some of the lines coming to the Tampa Bay area, including parts of the original Plant Line, are believed to have originated with federal grants. If CSXT were

to simply turn over its title documents – which ostensibly *should be* publicly available, recorded documents – these considerations could potentially be quickly put to rest.

Third, ascertaining the potential for public and trail use as well as potential reactivation for non-freight uses, necessitates determining title to the property. The City simply is unable to take an informed position in the instant matter without such title information.

Fourth, as the likely majority recipient of reversionary rights, the City's rights and interests are likely to be directly impacted by any action taken by the Board in this matter. *See Preseault v. ICC*, 494 U.S. 1 (1990) and *Brandt Tr. v. United States*, 572 U.S. 93 (2014). Accordingly, the City's position relative to the exemption request may be fundamentally impacted based on such documentation.

#### **IV. MOTION TO REJECT ABANDONMENT EXEMPTION**

Pursuant to 49 CFR 1152.20(d)(3), “[i]f the notice of exemption contains any false or misleading information, the use of the exemption is void ab initio and the Board shall summarily reject the exemption notice.” As noted above, CSXT stated in the notice that documentation “will be made available promptly to those requesting it.” If CSXT either has no information related to title and the reversionary interests to support the statements referenced in the Notice or is unwilling to make such information available, then the Notice contains false or misleading information and should be rejected accordingly.

#### **IV. CONCLUSION**

For the reasons stated above, the City requests the Board compel CSXT to make title documents available to the City or, in the alternative, reject the Notice.

Respectfully submitted this 9<sup>th</sup> day of September, 2019.

OFFICE OF THE CITY ATTORNEY  
FOR THE CITY OF ST. PETERSBURG

By: /s/ Bradley S. Tennant \_\_\_\_\_  
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#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail service or U.S. Postal Service, first class, to all parties in the instant action.

# **EXHIBIT A**

## **Bradley S. Tennant**

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**From:** Bradley S. Tennant  
**Sent:** Wednesday, August 28, 2019 1:59 PM  
**To:** 'lou@lgraillaw.com'  
**Cc:** Alfred Wendler; Angela C. Brooks  
**Subject:** Verified Notice of Exemption for STB Docket No. AB-55 (Sub-No. 794X)

Mr. Gitomer,

Thank you for taking the time to speak with me yesterday. In relation to the above-referenced Surface Transportation Board action and pursuant to 49 CFR 1152.50, the City of St. Petersburg hereby requests all title documentation in CSX's possession for the subject line. This includes, but is in no way limited to, documentation regarding the "reversionary interests" specifically referenced in your Verified Notice of Exemption, entered on August 20, 2019, in the above captioned matter.

Documentation or questions concerning same can be addressed directly to myself. Thank you.

Bradley Tennant  
Assistant City Attorney  
P. O. Box 2842  
St. Petersburg, FL 33731-2842  
Phone: 727-893-7401 / Fax: 727-892-5262  
Bradley.Tennant@stpete.org

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