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August 29, 2019
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August 29, 2019

VIA E-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.

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding on behalf of the C & C Railroad, LLC (formerly C & C Railroad, Inc.) is Verified Supplemental Information.

Should any questions arise regarding this filing, please feel free to contact me.
Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



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

RAW/ah
Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 33990

**C & C RAILROAD, INC.
– OPERATION EXEMPTION –
CENTERPOINT PROPERTIES, L.L.C.**

VERIFIED SUPPLEMENTAL INFORMATION OF C & C RAILROAD, LLC

Robert A. Wimbish
Stephen J. Rynn
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

ATTORNEYS FOR C & C RAILROAD, LLC

Dated: August 29, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 33990

**C & C RAILROAD, INC.
– OPERATION EXEMPTION –
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VERIFIED SUPPLEMENTAL INFORMATION OF C & C RAILROAD, LLC

Pursuant to an Acting Director’s Order served in this proceeding on July 30, 2019 (the “July 30 Order”), C & C Railroad, LLC (“C&C” – previously organized as C & C Railroad, Inc.)¹ and Union Pacific Railroad Company (“UP”) have been directed by the Surface Transportation Board (the “Board”) to respond to five enumerated information requests. By way of this Verified Supplement, C&C hereby tenders the requested information, which, among other things, reinforces that C&C did not attempt to mislead the Board in invoking the agency’s class exemption proceedings in this docket, and, accordingly, that C&C’s exemption should neither be revoked nor voided. Rather, the railroad track located within a warehouse facility now generally bounded by UP’s Global 2 rail yard and intermodal facility historically *did* connect with the interstate rail network, and C&C’s track could rather easily have been, and still could be, re-connected to UP’s system by restoring missing track on UP-owned land to facilitate the commencement of interstate common carrier operations. The following verified information should serve to resolve any uncertainty regarding whether C&C’s tracks have ever connected to

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

the interstate rail network.² Turning now to the five enumerated information requests, C&C respectfully responds as follows:

1. A description and any maps that would clarify the beginning and endpoint of the Lines in 2001 and whether they have ever physically connected to the interstate rail network.

C&C's tracks consist of four sets of double tracks (i.e., eight total tracks), roughly parallel-running and extending from the southeastern boundary of the lot that C&C's parent company – The Custom Companies, Inc. ("Custom") – occupies. A map depicting the configuration of C&C's tracks is attached as Exhibit A.

It does not appear that, at the time that C&C was formed and filed for authority to operate, its tracks connected to UP. However, an aerial map from 1993 (attached as Exhibit B), in addition to other materials already in the record in this proceeding, reflects that C&C's trackage had connected to tracks owned and operated by UP and its predecessors. Indeed the configuration of the C&C tracks, by itself, reflects the historic existence of connections to the interstate rail network. Moreover, C&C believes that the parties do not dispute that C&C's tracks had in the past connected – but no longer connect – to UP tracks, and, by extension, to the balance of the interstate rail network.

2. A description of the services and activities provided, or formerly provided, on the Lines by C&C.

C&C has not provided any service or undertaken any activities on its tracks.

Attached hereto as Appendix 1 is the Affidavit of George Cibula, principal of Northlake Transport, LLC, the former owner of the terminal and a principal with CLP Transportation, Inc., which was a former co-owner of C & C Railroad. In his testimony, Mr. Cibula provides relevant background concerning C & C's presence within Global 2, and explains

² See July 30 Order at 2.

that, in 2001, C&C was formed to support and to expand upon, CLP Transportation, Inc's and Custom's transportation, warehousing, and logistics services by offering rail service to shippers making use of the facility. Mr. Cibula's testimony reinforces the point C&C stressed in its May 31, 2019 filing in this proceeding – specifically, that C&C was formed for purposes of, and sought Board regulatory authority to undertake the provision of, rail common carrier service, and that C&C's invocation of Board procedures to offer common carrier service to the customers of Custom was undertaken in good faith. Mr. Cibula's testimony refutes UP's unsubstantiated claim that C&C's invocation of the operation class exemption, and the information contained therein, were abusive of the Board's processes or otherwise false and misleading. In so doing, his testimony undercuts the fundamental basis of UP's petition to revoke or void C&C's exemption and shows that C&C's actions before the Board and the motivation behind them were legitimate, and not driven by an intent to deceive or defraud anyone.

3. Information on whether the Lines were ever used by C&C in common carrier service.

C&C has not, to date, used its tracks in common carrier service.

4. Any information indicating when and under what circumstances any portion of the Lines was removed.

The trackage over which C&C possesses rights to operate remain in place, and could be operated over in interstate service, were they to be re-connected to UP trackage, and were a demand for common carrier service to emerge. No part of C&C's tracks has been removed.

It is possible that the Board intended in this case to obtain additional information regarding when and under what circumstances the tracks that had connected to those subleased by C&C (the "Connecting Tracks" – those tracks that historic areal images confirm had once

existed beyond the southeastern boundary of the Custom property) were removed. If so, C&C respectfully submits that materials available to C&C, including satellite images available online and discussed above, indicate that the Connecting Tracks were likely removed sometime between 1994 and 1998, a timeframe predating the formation of C&C. C&C is confident, however, that Custom did not undertake, or permit, the removal of the Connecting Tracks, since the Connecting Tracks belonged to UP. In all likelihood, UP removed the Connecting Tracks.

On a related note, C&C repeats here that, although the Connecting Track appears to have been missing as of the date of C&C's class exemption filing, C&C had no reason to believe that the limited amount of missing connecting track could not be re-installed, or that UP would be unwilling to re-install the missing connections.³ C&C has no record of contemporaneous communication from UP reflecting either UP's objection to C&C's formation and intended purpose or UP's refusal to reconnect with C&C,⁴ and, up until now at least, UP has provided none. Moreover, C&C never affirmatively stated anywhere in its class exemption filing that its tracks had a present connection to UP. Finally, UP has not argued that the absence of the connecting track is fatal to C&C's common carrier plans or that C&C was wrong to assume that C&C's tracks could be reconnected to the UP system with relative ease.

5. Information indicating who may have removed the Lines.

No portion of the trackage that C&C has rights to operate has been removed. To the extent the Board intended to seek information concerning the removal of the Connecting Tracks, C&C respectfully directs the Board to its response to Information Request No. 4, but adds here that it believes that the Connecting Tracks were most likely removed by UP, since they were located beyond the boundaries of C&C operation and beyond the boundary of Custom's

³ See May 31 Reply at 6.

⁴ See id.

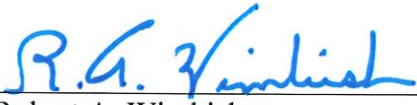
leasehold, and appear instead to have been on land owned by UP. Accordingly, C&C looks to UP to provide the information relevant to the removal of the Connecting Tracks and the circumstances behind the decision to remove them.

CONCLUSION

UP has sought to reopen this 18-year-old proceeding in the hopes of persuading the Board to revoke C&C's exemption authority or to nullify the exemption as void *ab initio*. UP has argued that the Board should take such action because C&C's exemption filing – particularly a map – purposely and misleadingly implied that C&C's tracks connected to the interstate rail network, when, in fact, UP had shortly before removed trackage that connected C&C's rails to the UP system. The facts presented here and in the filings submitted earlier this year simply do not bear out UP's allegation. Rather, C&C's invocation of the class exemption was genuine. C&C's rail common carrier plans were foreseeable and feasible, depending only upon the reinstallation of perhaps a few hundred feet of UP connecting track, in the aggregate. As C&C has stated before, the Board should reject UP's cynical conjecture that C&Cs' exemption filing was calculated to forestall UP's eviction action decades into the future.

The verified supplemental information that C&C has provided in response to the Board's July 30 Order shows that revocation and/or nullification of C&C's class exemption authority is unwarranted. Accordingly, UP's petition for such a Board order should be denied.

Respectfully submitted,

By: 

Robert A. Wimbish

Stephen J. Rynn

Fletcher & Sippel LLC

29 North Wacker Drive

Suite 800

Chicago, Illinois 60606-3208

(312) 252-1500

ATTORNEYS FOR C & C RAILROAD, LLC

Dated: August 29, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

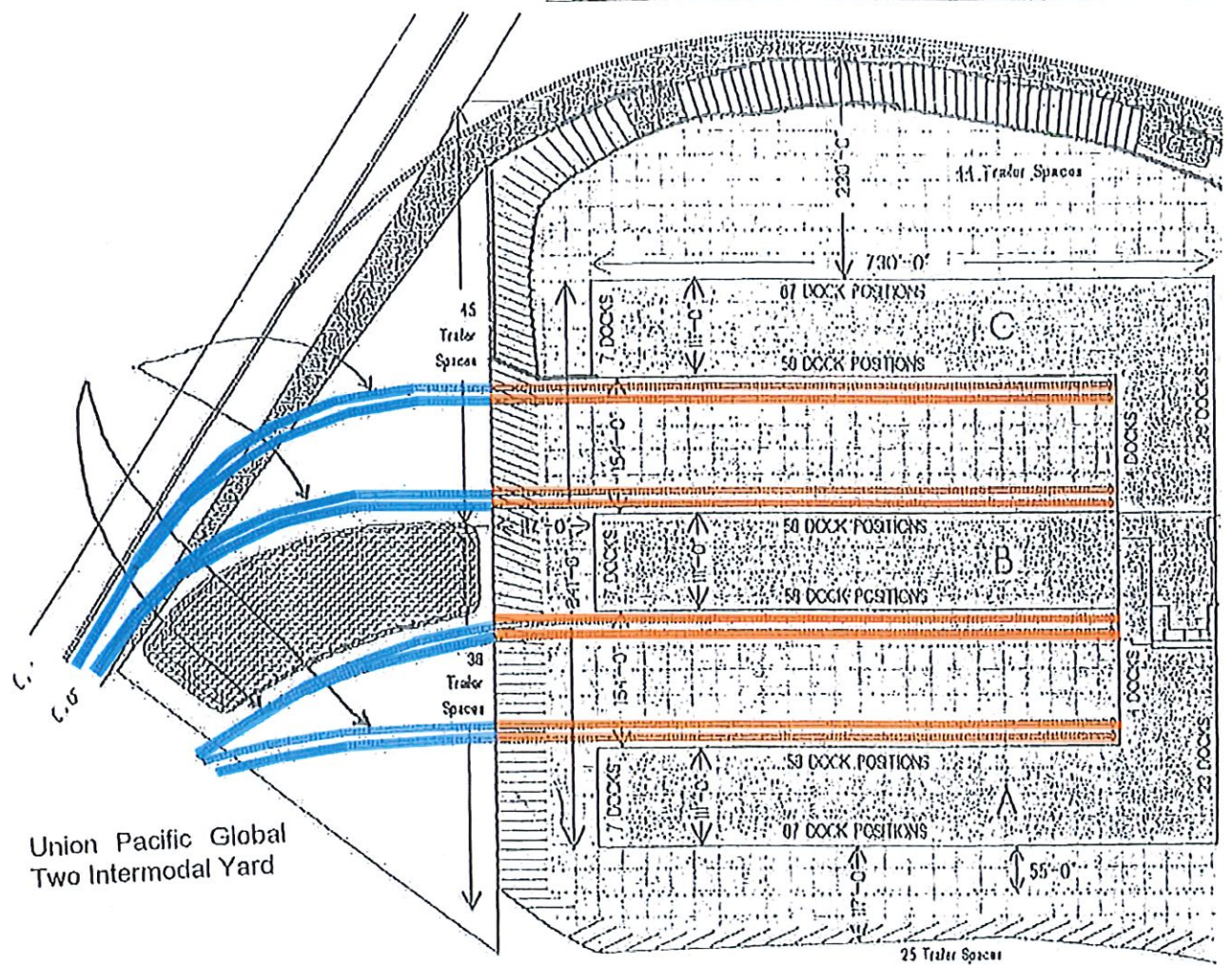
STB Docket No. FD 33990

**C & C RAILROAD, INC.
– OPERATION EXEMPTION –
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VERIFIED SUPPLEMENTAL INFORMATION OF C & C RAILROAD, LLC

EXHIBIT A

MAP DEPICTING CONFIGURATION OF C&C'S TRACKS



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EXHIBIT B

1993 AERIAL MAP

Legend

4.16.1993 USGS

Tri-State Tollway (Toll road)



Dwight D. Eisenhower Expy



600 ft

Google Earth

Image U.S. Geological Survey

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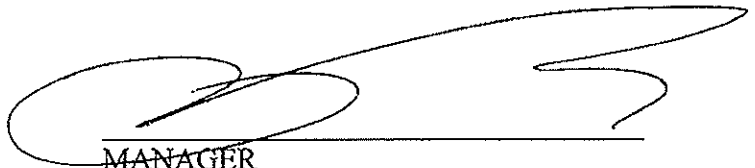
VERIFICATION

VERIFICATION

I, Perry Mandera, hereby verify under penalty of perjury as follows:

I am the Manager of C & C Railroad, LLC ("C&C"). I have read the forgoing Verified Supplemental Information, and certify that the foregoing information is true and correct. Further, I certify that I am qualified and authorized to file the subject Verified Supplemental Information on behalf of C&C.

Executed on August 29th, 2019

A handwritten signature in black ink, appearing to read 'Perry Mandera', is written over a horizontal line.

MANAGER
C & C Railroad, LLC

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**APPENDIX I
AFFIDAVIT OF GEORGE CIBULA**

AFFIDAVIT OF GEORGE CIBULA

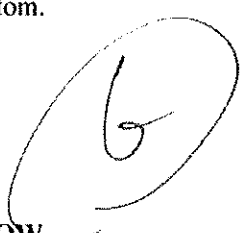
STATE of ILLINOIS)
) ss.
COUNTY of COOK)

GEORGE CIBULA, being duly sworn on oath deposes and states as follows:

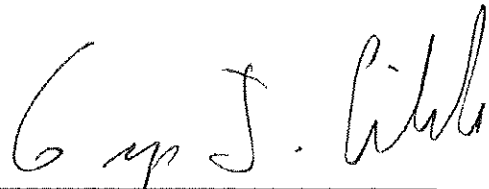
1. I was a principal of Northlake Transport, LLC. ("NTL"), a former owner of the logistics terminal where C & C Railroad's track is located at 317 W. Lake Street, Northlake, Illinois.
2. NTL sold the subject logistics terminal to CenterPoint Properties Trust ("CenterPoint"), which, in turn, sold the property to the Union Pacific Railroad Company ("UP").
3. As of December of 2000, my transportation company, CLP Transportation, Inc. ("CLP"), and The Custom Companies, Inc. ("Custom") were CenterPoint tenants of at the logistics terminal.
4. In December of 2000, CLP and Custom, each as half owners, formed C & C Railroad, Inc. ("C & C"), in order to extend to our customers a direct rail service option.
5. Upon its formation, C & C filed a Notice of Exemption with The Surface Transportation Board to provide rail common carrier service to and from the logistics terminal.
6. At the time C & C filed its Notice of Exemption, CLP Transportation served customers who received products by rail at The Global 2 Rail Yard via UP.
7. C & C filed the Notice of Exemption in good faith and with the intention of utilizing the track located on the property in support of customers of CLP, and, potentially, also, Custom.
8. In December of 2003, CLP moved from the logistics terminal and transferred its membership interest in C & C (by then converted to a limited liability partnership) to Custom.

FURTHER AFFIANT SAYETH NAUGHT.

SIGNATURE AND NOTARY PAGE TO FOLLOW



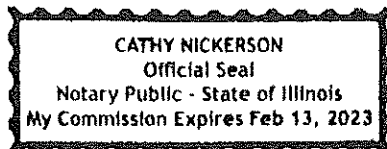
DATED this 29 day of August, 2019.

By: 
GEORGE CIBULA

STATE of ILLINOIS)
 DePue) SS
COUNTY of COOK)

I, the undersigned, a Notary Public in and for said County, the State aforesaid, DO HEREBY CERTIFY that GEORGE CIBULA, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument, as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this 29th day of August, 2019




NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of August, 2019, a copy of the foregoing **Verified Supplemental Information** was served by U.S. Mail, first class postage prepaid, or by more expeditious means of delivery, upon all parties of record.

Jeremy M. Berman
Union Pacific Railroad Company
1400 Douglas Street, Stop 1580
Omaha, NE 68179

Gordon P. Macdougall
1025 Connecticut Avenue, NW, Suite 919
Washington, DC 20036-5444



Robert A. Wimbish