

ORIGINAL

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225
WASHINGTON, D.C. 20005

www.balljanik.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947

LOUIS E. GITOMER
Of COUNSEL
(202) 466-6532

lgitomer@bjllp.com

March 22, 2002



205027
Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, D. C. 20423

RE: Finance Docket No. 34040, *Riverview Trenton Railroad Company—Petition For an Exemption from 49 U.S.C. 10901 to Acquire and Operate a Rail Line in Wayne, County, MI*

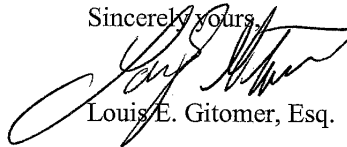
Dear Secretary Williams:

Enclosed are the original and ten copies of the Comments of CSX Transportation, Inc. in STB Finance Docket No. 34040, and three floppy diskettes. Please time and date stamp the additional copy of this letter and the pleading and return it with our messenger. Thank you for your assistance.

CSXT respectfully requests the Board accept these late-comments. Counsel for CSXT were not able to coordinate the filing until 5:00 p.m. yesterday, too late in the day for it to reach the Board. CSXT does not believe that any party will be prejudiced by its making this filing one-day late or that the Board's schedule for deciding this matter will be disrupted.

If you have any questions, call or email me.

Sincerely yours,



Louis E. Gitomer, Esq.

Enclosures

ENTERED
Office of the Secretary
MAR 25 2002
Part of
Public Record

1

PORTLAND, OREGON

WASHINGTON, D.C.

BEND, OREGON

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34040

RIVERVIEW TRENTON RAILROAD COMPANY –
PETITION FOR AN EXEMPTION FROM 49 U.S.C. 10901
TO ACQUIRE AND OPERATE A RAIL LINE
IN WAYNE, COUNTY, MI



RESPONSE
OF
CSX TRANSPORTATION, INC.
TO
RIVERVIEW TRENTON RAILROAD COMPANY

CSX Transportation, Inc. (CSXT) received the Response of Riverview Trenton Railroad Company (Petitioner) to the Surface Transportation Board's (the "STB") February 15 Request to Supplement Record (Petitioner's Response) on Thursday, March 14 and has the following comments.¹

CSXT neither opposes nor supports the proposed transaction described in Petitioner's Response.

CSXT does have certain concerns about the proposal described in Petitioner's Response, which it expresses here. CSXT submits that the STB should consider taking this proceeding as an opportunity to strongly urge potential new rail carriers to engage in thorough and meaningful discussions with the existing carriers with which they will connect. Further, CSXT asks that the STB expressly state in any order granting the Petition, that it is retaining jurisdiction over

¹ Petitioner filed a Petition for Exemption (the "Petition") on May 1, 2001 seeking exemption to acquire and operate a short rail line.

regulated transportation-related matters associated with Petitioner's implementation of any common carrier authority that may be granted in this proceeding.

CSXT has a number of concerns which it feels should appropriately be addressed to the STB. Again, these concerns do not rise to the level of opposition to the proposal, but are important considerations that we feel the STB should weigh as it rules on the Petition.

First, essentially no effort has been made by Petitioner to approach CSXT on a commercial basis to discuss any kind of operating or commercial relationships. Indeed, the only discussion of such a nature that has been identified within CSXT thus far is a very preliminary meeting that was held on or about February 9, 2001. CSXT's representatives, almost all from its Automotive Service Group, were of the impression that what Petitioner had under consideration was the creation of an automotive distribution center (sometimes called an "auto ramp") for the loading of manufactured motor vehicles. CSXT now understands that Petitioner's current plan is to construct an intermodal terminal and to handle intermodal trailer and container traffic over the one mile of rail line that it proposes to operate.

Petitioner is certainly entitled to file its petition with the STB seeking the authority it seeks without engaging in commercial negotiations -- or even meaningful discussions -- with its potential connecting carriers. The STB's regulations do not require any kind of discussion between a proposed new operator of a line of railroad and the carrier or carriers with which it will connect, although perhaps they should. (The filing rules at 49 CFR 1150.4(e) speak of identifying "the principle terms of agreements with carriers covering operation, interchange of traffic" etc.; but CSXT is aware of no STB decision requiring discussions on such issues prior to seeking operating authority.) However, CSXT does not view such an approach as commercially prudent. As will be better understood from the following discussion, the absence of any

meaningful dialogue between Petitioner and CSXT about relationships and substantive plans going forward is of no small concern.

In fairness to Petitioner, CSXT understands it to be Petitioner's position that its representatives discussed their interest in both the possibility of automotive traffic and intermodal traffic at the February 9, 2001 meeting. And, we are told that some post-meeting conversations occurred between a representative of Petitioner and a CSXT Automotive Service Group employee who retired around September 1, 2001. CSXT is not asserting that it has been kept in the dark through some nefarious plan of Petitioner's. CSXT sees no reason to ascribe "fault" to Petitioner. Nonetheless, CSXT reads today that common carrier authority to operate a railroad is sought with the object of seeking to negotiate agreements with us for intermodal traffic; yet no one at CSXT's affiliated company, CSX Intermodal appears to have been so much as consulted, let alone had meaningful discussions about plans.

Second, CSXT has recently encountered several incidents of what can best be characterized as "regulatory opportunism". In these situations, CSXT encountered companies that attempted to "game" regulatory and/or industry rules in an effort to achieve results that were economically perverse and could not have been negotiated in an arm's-length commercial transaction. Two of these recent incidents involved short line railroads and attempts to compel CSXT to pay extraordinary above-market rates on freight cars, while another involved an effort by a newly-formed short line common carrier to compel CSXT to pay extraordinary "switching charges." This latter short line was formed to operate what had long been a set of industrial sidetracks, substituting the short line's service for the incumbent's own pick-up and delivery switching. (There have been numerous other such situations, including some where the intent was not so clearly to "game" the rules, but they do not bear mentioning here.)

In the first two situations alluded to, the STB's Car Hire Deprescription rules and the availability of industry arbitration provisions enabled CSXT to negotiate a more satisfactory arrangement. And, in the other, CSXT was able to resolve the disagreement with the new start-up short line without having to resort to the STB's jurisdiction. Here, the absence of any meaningful dialogue by Petitioner with CSXT about its intermodal ideas at this time may simply be because Petitioner generally has been more focused on its legal issues than on commercial planning, or otherwise. Or, its plans may not include CSX at all. However, CSXT's recent experiences and Petitioner's relative silence with respect to commercial plans does give CSXT some concern that more may be planned than meets the eye.

Third, the proposition that the Petitioner wishes to operate an intermodal terminal and engage in intermodal transportation over its one mile of track strikes CSXT as rather impractical. While CSXT will not totally dismiss the possibility that Petitioner may have developed large potential volumes of business that would move in intermodal service between Detroit and other cities, it is important to remember that intermodal service operates between intermodal terminals that serve origin-destination city pairs. Competitive service frequently requires dedicated intermodal trains. An intermodal service plan must fit into a carrier's train and terminal network. Intermodal transportation is very different from general carload merchandise railroading where single cars move from yard to yard and are placed in trains according to intermediate and final destination. In order for Petitioner to successfully develop intermodal traffic, it seems to CSXT that it will have to identify origination and termination markets and attract sufficient volume (both inbound and outbound) to justify train service to the terminal network of a connecting carrier. While this may already have been done with respect to Norfolk Southern Railway

Company or Canadian National Railway Company ("CN") (and CN seems to be the more efficient connecting line) it certainly has not been discussed with CSX Intermodal.

On the other hand, CSXT is concerned that Petitioner may envision a scenario in which it receives and loads outbound trailer/containers destined for many mixed destinations rather than trainload quantities moving in a given lane. Such a vision of the world would contemplate a one-mile move to Conrail, a request that CSXT (either operating its own trains or using Conrail) then introduce these mixed blocks of intermodal traffic into the intermodal service network of CSX Intermodal. Such an operation seems wholly impractical without the commitment of significant volumes of traffic, the development of a cost-effective operating plan that can serve customer needs, and the negotiation of mutually satisfactory commercial arrangements with CSX Intermodal. Petitioner has had no discussions to develop these arrangements with CSXT or CSX Intermodal, and it seems to us highly unlikely that an intermodal terminal operation with CSXT as the connecting carrier could be successfully developed.

Confusion about the role of intermodal terminal facilities in the intermodal service chain is not infrequent. Some misperceive the service of lifting and loading trailers and containers as having independent value, separate and apart from its true role as a mere adjunct to the railroad line haul movement. They seek to compel the carrier to use their ramping services rather than its own under the guise of "asking for rates." Others take a "build it and they will come" approach, investing in facilities for which there is insufficient demand to support intermodal train service. CSXT's experience with proposed intermodal facilities on short line railroads is, at best, mixed. Generally, they do not work. If the involvement of an additional carrier significantly extends the rail haul to a market with sufficient volume and at low enough cost, it may work. But there must be incremental value added. By its nature, intermodal service involves a highway move at either

end. Adding a rail-rail interchange at either end and another carrier to divide the revenue in an intensely competitive market to save a few highway miles is seldom justified.

CSXT readily acknowledges that the foregoing scenarios represent some speculation on its part. But, given the relative silence we have encountered thus far, CSXT hopes that the STB will understand why we might have some concerns about the way things may play out in the future.

CSXT's SUGGESTIONS

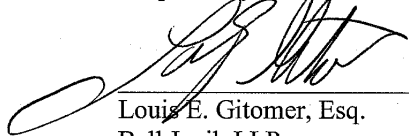
Again, CSXT does not oppose the transaction. If the STB grants the Petition, Petitioner will have the opportunity to succeed or fail. And, CSXT is willing to discuss Petitioner's plans and to explore mutually beneficial arrangements, so long as Petitioner understands that "mutually beneficial" means that CSXT will not undertake any obligation or perform any service that does not benefit CSXT's shareholders. No such benefits are readily apparent, but CSXT will certainly not close the door to dialogue. However, given the foregoing concerns as expressed, CSXT makes the following two suggestions to the STB:

First, CSXT requests that the STB should take this opportunity to admonish parties seeking new common carrier operating authority (by application, petition or class exemption) to engage in thorough and meaningful discussions with their potential direct connections -- both from an operating and commercial standpoint. We submit that such an admonition would serve all participants in the rail transportation network well, and might even prevent disputes. Firm understandings at the beginning of a relationship are fundamental to long-standing, productive relationships such as those CSXT has enjoyed with its many feeder line connections. Of course, most of those feeder lines were created by transactions in which the line was purchased from

CSXT and, of necessity, the basic elements of the commercial relationship were defined in advance through the sales negotiations.

Second, CSXT respectfully requests the STB to expressly state in its decision that it is retaining jurisdiction over the transportation-related issues associated with the authority it is granting. (Intermodal transportation is, of course, exempt from regulation, but the common carrier authority sought is not limited to intermodal.) The STB should make it clear to all concerned that its primary jurisdiction over regulated matters will be exercised to oversee disputes in the nature of interchange, car compensation and other regulated transportation-related obligations, should they arise. Once authority is granted to it, should Petitioner and another carrier (including Conrail) come to some dispute over such matters, it is important that such a disagreement be resolved by the STB, which understands such matters well and is best positioned to determine what positions are, and are not, reasonable. Similarly, if Petitioner asserts transportation-related rights as a carrier emanating from the relief it seeks here, it would be most helpful if the STB has expressed in advance its intention to exercise its jurisdiction over such matters.

Respectfully submitted,



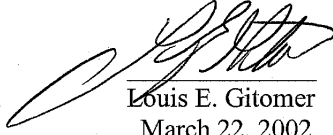
Paul R. Hitchcock, Esq.
Assistant General Counsel
CSX Transportation, Inc.
500 Water Street, J150
Jacksonville, FL 32202
(904) 359-1192

Louis E. Gitomer, Esq.
Ball Janik LLP
1455 F Street, NW, Suite 225
Washington, DC 20004
(202) 638-3307

Dated: March 22, 2002

CERTIFICATE OF SERVICE

I certify that I have this day served copies of CSX Transportation, Inc.'s Response in Finance Docket No. 34040, *Riverview Trenton Railroad Company—Petition For an Exemption from 49 U.S.C. 10901 to Acquire and Operate a Rail Line in Wayne, County, MI* upon all parties of record in this proceeding by pre-paid first class mail.



Louis E. Gitomer
March 22, 2002