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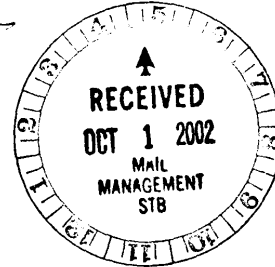
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October 1, 2002

via Hand Delivery

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423



**Re: NORTH CAROLINA STATE PORTS AUTHORITY
-- ACQUISITION EXEMPTION --
NORTH CAROLINA PORTS RAILWAY COMMISSION
FINANCE DOCKET NO. 34258**

Dear Secretary Williams:

Enclosed for filing in the above referenced docket are the original and ten (10) copies of the North Carolina State Ports Authority's (SPA) Notice of Exemption and Motion to Dismiss. Simultaneous with this filing, the Carolina Rail Service, LLP and the Wilmington Terminal Railroad, L.P. are filing related Notices of Exemption in Finance Dockets 34256 and 34257 respectively.

Because the SPA is a state agency, the filing fee is waived pursuant to 49 C.F.R. §1002.2(e). This filing includes a color map as an exhibit.

Please date stamp the extra copy of this cover letter and return it to the messenger who delivered this filing.

Sincerely,

FEE RECEIVED

Betty Jo Christian
Betty Jo Christian

FILED

Enclosure
cc: Dennis Myers

OCT 01 2002

**SURFACE
TRANSPORTATION BOARD**

ENTERED
Office of Proceedings

OCT 02 2002

Part of
Public Record

OCT 01 2002

TRANSPORTATION BOARD

WASHINGTON

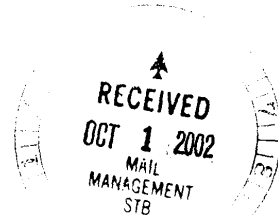
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LOS ANGELES

LONDON

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34258



NORTH CAROLINA STATE PORTS AUTHORITY
-- ACQUISITION EXEMPTION --
NORTH CAROLINA PORTS RAILWAY COMMISSION

NORTH CAROLINA STATE PORTS AUTHORITY
VERIFIED NOTICE OF EXEMPTION
FROM 49 U.S.C § 10901

The North Carolina State Ports Authority (SPA), a noncarrier and an agency of the State of North Carolina, hereby files this Verified Notice of Exemption under 49 C.F.R. § 1150.31(a)(1) to acquire from the North Carolina Ports Railway Commission (PRC), a non-operating railroad subject to a "residual common carrier obligation,"¹ certain right-of-way, trackage, and other rail assets at the Port of Wilmington, North Carolina and at the Port of Morehead City, North Carolina.² Contemporaneous with the filing of this Notice of Exemption, SPA is filing in this Docket a Motion to Dismiss this Verified Notice of Exemption on the ground that the transaction is not subject to STB jurisdiction and to obtain a jurisdictional determination that SPA will not become a common carrier by virtue of this transaction.

¹ *North Carolina Ports Railway Commission — Petition for Declaratory Order of Prospective Abandonment Exemption*, Finance Docket No. 31248 (ICC Decided Sept. 21, 1988).

² SPA will also acquire all of the stock of PRC's subsidiary, the Beaufort & Morehead Railway, Inc. (BMRI), a rail carrier that currently operates over PRC's lines at Morehead City. *See Beaufort & Morehead Railway, Inc.—Acquisition and Operation Exemption—North Carolina Ports Railway Commission d/b/a Beaufort & Morehead Railway*, Finance Docket No. 34151 (STB served Jan. 18, 2002).

The lines to be acquired at Wilmington consist of all of PRC's railroad line located in Wilmington, New Hanover County, North Carolina and include the following: (1) the Front Street Spur, extending from the east line of Third Street at CSX Rail Valuation Station 91+37.3 and extending generally in a northerly direction a distance of 0.66 miles, more or less, to CSX Rail Valuation Station 56+39; (2) the New River Spur, extending from the CSX Rail Valuation Station 0+00, also being Rail Valuation Station 86+20 on the Front Street Spur at the west line of Second Street and extending generally in a southerly direction a distance of 3.5 miles, more or less, to CSX Rail Valuation Station 185+00; and (3) the line extending from the north entrance to the Port of Wilmington at Transit Road, near its intersection with Burnett Blvd., to the south entrance to said Port, at River Road near its intersection with Shipyard Blvd., through and including the classification yards and including all of the railroad tracks on said Port, whether denominated as spurs, side tracks, industrial tracks, or otherwise, (but excluding crane rails). The WTR currently operates the subject lines (the "Wilmington Lines").

The lines to be acquired at Morehead City consist of all of PRC's railroad line extending from the connection with the Norfolk Southern Railway Company (Atlantic & East Carolina Railway) at milepost 0.0 in Morehead City to milepost 0.87 at Gallants Channel near Morehead City, a distance of .87 miles in Carteret County, NC, serving the intermediate stations of Marsh Island, Radio Island and Beaufort Team Track, together with all of PRC's yard and interchange tracks (Morehead Lines).

The impetus for this transaction is the enactment by the North Carolina legislature of a new law, SB 1115. That legislation requires the transfer of PRC's assets and liabilities to SPA and abolishes PRC. A copy of SB 1115 is attached hereto as Exhibit A.

Pursuant to SB 1115, SPA will acquire all of the rights, title, ownership interests, and leasehold interests of PRC and its subsidiary, BMRI, in the right-of-way, trackage, and other physical assets of the Wilmington Lines and the Morehead Lines. The Wilmington Terminal Railroad, LP (WTR) will operate the Wilmington Lines and Carolina Rail Service, LLC (CRS) will operate the Morehead Lines pursuant to the terms of operating agreements to be entered into by SPA with WTR and CRS, respectively, and the conveyance by PRC to those carriers of exclusive permanent easements to conduct rail operations over, and maintenance on, the Lines.³ BMRI will cease all rail operations and its equipment will be sold or otherwise disposed of. SPA is prohibited by law from becoming a common carrier. Accordingly, SPA will not acquire the right or obligation to conduct any rail operations on the Lines and will not hold itself out as providing common carrier service.

SPA expects to consummate the transactions described above no later than November 20, 2002, and no earlier than the effective date of this notice.

In support of this Verified Notice of Exemption and pursuant to 49 C.F.R. § 1150.33, SPA submits the following information:

- (a) Full name and address of applicant:

North Carolina State Ports Authority
2202 Burnett Blvd.
Wilmington, NC 28401

³ Simultaneous with the filing of this Verified Notice of Exemption, the Wilmington Terminal Railroad, LP is filing a Verified Notice of Exemption in docket 34257 to operate the Wilmington Lines and Carolina Rail Service, LLC is filing a Verified Notice of Exemption in docket 34256 to operate the Morehead Lines.

(b) Applicant's representative:

Dennis P. Myers
Assistant Attorney General
State of North Carolina
2202 Burnett Blvd.
PO Box 9002
Wilmington NC 28402
(910) 343-6424

and

Betty Jo Christian
Pantelis Michalopoulos
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-3000

(c) Statement of agreement:

SPA's acquisition of the assets of PRC and its subsidiaries and its grant of a permanent and exclusive rail operating easement over the Wilmington Lines to the Wilmington Terminal Railroad, Inc. and over the Morehead Lines to Carolina Rail Service, LLC are being implemented pursuant to a statute enacted by the North Carolina legislature on September 20, 2002. There is no separate agreement with respect to the transfer of assets from PRC and its subsidiary to SPA. It is anticipated that the Easements between PRC, WTR and CRS, and the Operating Agreements between SPA, WTR and CRS will be executed no later than November 20, 2002.

(d) The operator of the property:

SPA will not operate, or retain the right or ability to operate, any rail service on the Wilmington Lines and the Morehead Lines. WTR will operate the Wilmington Lines pursuant to a permanent rail operating easement to be granted by PRC and an operating agreement with SPA. CRS will operate the Morehead Lines pursuant to a permanent rail operating easement to be granted by PRC and an operating agreement with SPA.

(e) Brief summary of proposed transaction:

(1) Name and Address of Railroad Transferring Subject Property:

North Carolina Ports Railway Commission⁴
1717 Woodbine Street
Wilmington NC 28401

(2) Proposed time schedule for consummation of the transaction:

On September 20, 2002, the North Carolina legislature passed SB 1115, which requires the abolition of PRC and transfer of all its assets to SPA within 60 days of the effective day of the Act subject to certain conditions. Accordingly, SPA contemplates consummating the acquisition of PRC's assets on or before November 20, 2002, but in no event prior to the effective date of this Notice of Exemption.

(3) The mileposts of the subject property, including any branch lines:

Wilmington

⁴ In 1988, the PRC was determined to be exempt from regulation under the Interstate Commerce Act. The same ruling, however, stated that PRC had a residual common carrier obligation. See *North Carolina Ports Railway Commission — Petition for Declaratory Order or Prospective Abandonment Exemption*, Finance Docket No. 31248 (ICC Decided Sept. 21, 1988).

The subject property at Wilmington includes the following:

1. The Front Street Spur, extending from the east line of Third Street at CSX Rail Valuation Station 91+37.3 and extending generally in a northerly direction a distance of 0.66 miles, more or less, to CSX Rail Valuation Station 56+39, in Wilmington, New Hanover County, North Carolina.
2. The New River Spur, extending from the CSX Rail Valuation Station 0+00, also being Rail Valuation Station 86+20 on the Front Street Spur at the west line of Second Street and extending generally in a southerly direction a distance of 3.5 miles, more or less, to CSX Rail Valuation Station 185+00, in Wilmington, New Hanover County, North Carolina.
3. The line extending from the north entrance to the Port of Wilmington at Transit Road, near its intersection with Burnett Blvd., to the south entrance to said Port, at River Road near its intersection with Shipyard Blvd., through and including the classification yards and including all of the railroad tracks on said Port, whether denominated as spurs, side tracks, industrial tracks, or otherwise, (but excluding crane rails) all in Wilmington, New Hanover County, North Carolina.

Morehead City

The subject property at Morehead City includes the following:

1. All of PRC's railroad line extending from the connection with the Norfolk Southern Railway Company / North Carolina Railroad Company at Milepost 0.0 in Morehead City 28557 to Milepost 0.87 at Gallants Channel on Radio Island, Morehead City 28557, a distance of 0.87 miles, and including the spur track and consolidation tracks leading from said line, generally along Inlet Drive, to the industrial tracks on the property leased from the North Carolina State Ports Authority to PCS Phosphate Company, Inc and the spur tracks leading to the PCS Phosphate Company, Inc. rail car dump and the "Fishmeal" spur on the area commonly known as Marsh Island, all in Carteret County, North Carolina; and

2. All of PRC's railroad line extending from the connection with the Norfolk Southern Railway Company / North Carolina Railroad Company at Milepost 0.0 in Morehead City 28557, through and including the classification yard parallel to Highway 70 onto the Morehead City Port, and thus including all of the railroad tracks on said Port, whether denominated as spurs, side tracks, industrial tracks, or otherwise, all in Carteret County, North Carolina.

(4) The total route miles being acquired:

Wilmington

18, more or less, including approximately 14 miles of intra-terminal tracks.

Morehead City

4.87, more or less, including approximately 4 miles of intra-terminal tracks.

(f) A map that clearly indicates the area to be served, including origins, terminal stations, cities, counties, and States:

Wilmington

See Exhibit B attached hereto.

Morehead City

See Exhibit C attached hereto.

(g) Revenue certification:

SPA's projected revenues do not exceed those that would qualify it as a Class III carrier if it were a carrier. In addition, SPA's projected annual revenues from rail operations will not exceed \$5,000,000. Therefore, 49 CFR 1150.32(e) would not apply to this transaction even if it were within the Board's jurisdiction.

(h) Environmental and historic preservation reporting requirements:

Under 49 C.F.R. § 1105.6(c)(2)(i), the proposed transaction is exempt from environmental reporting requirements. The transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5). Under 49 C.F.R. § 1105.8(b), the proposed transaction is also exempt from historic preservation reporting requirements.

(i) Caption summary

A caption summary in the appropriate form is attached as Exhibit D hereto.

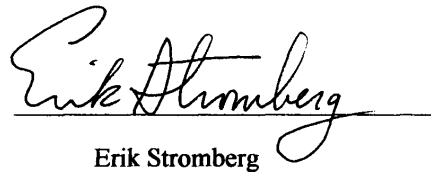
Respectfully submitted,

Betty Jo Christian
Pantelis Michalopoulos
David F. Rifkind
Steptoe & Johnson LLP
1330 Connecticut Ave., N.W.
Washington, DC 20036
(202) 429-3000

Counsel for North Carolina State Ports Authority

Verification

I, Erik Stromberg, verify under penalty of perjury that I am Executive Director of the North Carolina State Ports Authority, that the foregoing Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.31 is true and correct to the best of my knowledge and belief, and that I am authorized to verify this Notice on behalf of the North Carolina State Ports Authority.


Erik Stromberg

Date: September 27, 2002

EXCERPT OF
SENATE BILL 1115
RATIFIED BILL

AN ACT TO MODIFY THE CURRENT OPERATIONS APPROPRIATIONS ACT
OF 2001 AND TO MAKE OTHER CHANGES IN THE BUDGET OPERATION OF
THE STATE.

The General Assembly of North Carolina enacts:

REPEAL PORTS RAILWAY COMMISSION/TRANSFER TO STATE PORTS AUTHORITY

SECTION 6.6.(a) Part 11 of Article 10 of Chapter 143B of the General Statutes, G.S. 143B-469 through G.S. 143B-469.3, is repealed.

SECTION 6.6.(b) G.S. 120-123(25) is repealed.

SECTION 6.6.(c) G.S. 143B-454(a)(4) reads as rewritten:

"(4) Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of beltline roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, (striketthrough: excluding terminal railroads;) and to acquire, construct, and maintain, but not operate, such rail facilities as may be

necessary or useful in connection with the operation of the State Ports, provided that nothing in this subdivision shall be construed as requiring or allowing the North Carolina State Ports Authority to become a carrier by rail subject to the federal laws regulating those carriers;"

SECTION 6.6.(d) Within 30 days of the date this section becomes law, the North Carolina Ports Railway Commission shall provide the North Carolina State Ports Authority with a complete list of its assets and liabilities. All of the assets, real and personal, tangible and intangible, and all of the liabilities, including contractual obligations, of the North Carolina Ports Railway Commission are transferred to the North Carolina State Ports Authority. If and to the extent that such transfers require the execution of any documents or instruments of transfer by the North Carolina Ports Railway Commission, those documents may be executed by the current officers and members of the Commission and shall be executed within 60 days of the date this section becomes law.

SECTION 6.6.(e) As part of a plan to reorganize and consolidate rail operations at the State Ports, the North Carolina State Ports Authority may sell or transfer the Beaufort and Morehead Railway, Inc., or any part thereof or interest therein, to a terminal switching or short line railroad company, or to the North Carolina Railroad Company, on such terms and conditions as the parties may agree to.

SECTION 6.6.(f) The Attorney General within 45 days of this section becoming law shall render an opinion as to whether or not subsections (a) through (e) of this section will subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act. Subsections (a) through (e) of this section become effective only if an opinion is issued that it does not subject the State Ports Authority to status as a common carrier subject to the Railway

Labor Act, and in such case subsections (a) through (e) of this section become effective upon the issuance of the opinion. In lieu of subsections (a) through (e) of this section, if the North Carolina State Ports Authority finds that the transfer of any stock owned by the North Carolina Ports Railway Commission to the North Carolina State Ports Authority will accomplish the same end as the transfer of assets of the North Carolina Ports Railway Commission, it may order such transfer if the Attorney General issues an opinion it does not subject the State Ports Authority to status as a common carrier subject to the Railway Labor Act, and in such case the transfer becomes effective 60 days after it is ordered.

HARBOR BRIDGE					
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				PROJ. No.	
				DESIGN:	
				DRAWING:	
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				R.D.S.	
				DATE: 9/25/02	
				SCALE: AS SHOWN	
				SHEET 1 OF 1	

DEPARTMENT OF ENGINEERING

PORT OF WILMINGTON RAILROAD

CHIEF ENGINEER
JERREL J. FREEMAN, P.E.

PROJ. No.

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REFV	DESCRIPTION	APP DATE	SPAL	

**MAP WILL BE SCANNED
AT A LATER DATE**

EXHIBIT D

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 34258

**NORTH CAROLINA STATE PORTS AUTHORITY
-- ACQUISITION EXEMPTION --
NORTH CAROLINA PORTS RAILWAY COMMISSION**

The North Carolina State Ports Authority (SPA), a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire the assets of the North Carolina Ports Railway Commission (PRC), including all of PRC's railroad line located in Wilmington, New Hanover County, North Carolina which consists of the following: (A) the PRC's railroad lines in Hanover County, North Carolina at the Port of Wilmington : (1) the Front Street Spur, extending from the east line of Third Street at CSX Rail Valuation Station 91+37.3 and extending generally in a northerly direction a distance of 0.66 miles, more or less, to CSX Rail Valuation Station 56+39; (2) the New River Spur, extending from the CSX Rail Valuation Station 0+00, also being Rail Valuation Station 86+20 on the Front Street Spur at the west line of Second Street and extending generally in a southerly direction a distance of 3.5 miles, more or less, to CSX Rail Valuation Station 185+00; and (3) The line extending from the north entrance to the Port of Wilmington at Transit Road, near its intersection with Burnett Blvd., to the south entrance to said Port, at River Road near its intersection with Shipyard Blvd., through and including the classification yards and including all of the railroad tracks on said Port, whether denominated as spurs, side tracks, industrial tracks, or otherwise, (but excluding crane rails), all of which are currently operated by the WTR ; and (B) PRC's railroad line at Morehead City, in Carteret

County, North Carolina, extending from the connection with the Norfolk Southern Railway Company (Atlantic & East Carolina Railway) at milepost 0.0 in Morehead City to milepost 0.87 at Gallants Channel near Morehead City, a distance of .87 miles in Carteret County, NC, serving the intermediate stations of Marsh Island, Radio Island and Beaufort Team Track, together with all of PRC's yard and interchange tracks.

Comments must be filed with the Board and served on Dennis P. Myers, Assistant Attorney General, State of North Carolina, 2202 Burnett Blvd., P.O. Box 9002, Wilmington, N.C. 28402; (910) 343-6424; and Pantelis Michalopoulos and Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Ave, NW, Washington, DC 20036; (202) 429-3000.

This notice is filed under §1150.31. If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: September __, 2002

By the Board

Vernon A. Williams
Secretary