



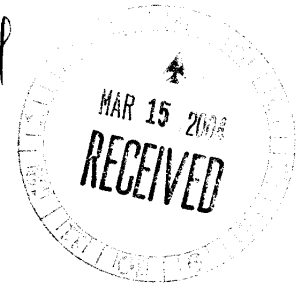
BRUSSELS CINCINNATI CLEVELAND COLUMBUS DAYTON NEW YORK WASHINGTON, D.C.

March 15, 2004

Via Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K St. N.W.
Washington, D.C. 20423

210304



RE: STB Finance Docket No. 34421 (Sub-No. 1), *HolRail LLC—Petition for Crossing Authority Under 49 U.S.C. § 10901(d)—HolRail LLC's Second Motion to Compel*

Dear Secretary Williams:

Enclosed please find the original and ten (10) copies of HolRail LLC's Second Motion to Compel for filing in the above-referenced docket. An extra copy of this filing is enclosed for stamping and returning to our offices.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

Michael H. Higgins

Jeffrey O. Moreno
Michael H. Higgins
Counsel for HolRail LLC

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THOMPSON HINE LLP
ATTORNEYS AT LAW

1920 N Street, N.W.
Washington, D.C. 20036-1600

www.ThompsonHine.com
Phone 202.331.8800
Fax 202.331.8330

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 34421 (Sub-No. 1)

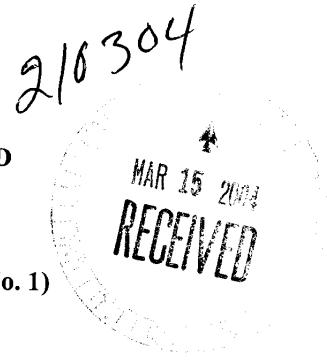
**HOLRAIL LLC—
PETITION FOR CROSSING AUTHORITY UNDER 49 U.S.C. § 10901(d)**

HOLRAIL LLC's SECOND MOTION TO COMPEL

Pursuant to 49 C.F.R. § 1114.31(a), HolRail LLC ("HolRail"), hereby moves the Surface Transportation Board ("STB" or "Board") to compel CSX Transportation, Inc. ("CSX") to respond to five interrogatories and one request for production of documents contained in "HolRail LLC's First Set of Discovery Requests to CSX Transportation, Inc." HolRail requires responsive information from CSX in order to prepare a Petition for Crossing Authority, pursuant to 49 U.S.C. § 10901(d). HolRail requires crossing authority in order to construct a new rail line across the CSX right-of-way that is the subject of HolRail's "Petition for Exemption from 49 U.S.C. § 10901 to Construct and Operate a Rail Line in Orangeburg and Dorchester Counties, South Carolina." The information that HolRail seeks to discover is directly relevant to the statutory standard governing crossing petitions, and therefore, this Motion to Compel should be granted.

I. BACKGROUND

This Motion to Compel ("Motion") is related to the petition HolRail filed on November 13, 2003 in STB Finance Docket No. 34421 for an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate a rail line in Orangeburg and



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Dorchester Counties, South Carolina (the "Petition"). HolRail's primary purpose is to establish intramodal rail competition at the Holly Hill cement facility, operated by HolRail's corporate parent, Holcim (US) Inc. ("Holcim"). Holly Hill is presently captive to CSX for rail service.¹

In its Petition, HolRail requested exemption authority for two routes: the Preferred Route and an Alternate Route. The Preferred Route, as HolRail explained in its Petition, is approximately two miles long and would be constructed, in large part, across the length of CSX's existing right-of-way, and parallel to CSX's existing track.² A major reason why HolRail prefers this route is that the Alternative Route, on adjacent Holcim property, would require entirely new construction within an environmentally sensitive area, known as Four Hole Swamp. The swamp is a wetland located within South Carolina's Coastal Management Zone and any new construction immediately raises potential adverse environmental consequences. The construction of HolRail's Preferred Route longitudinally, over the length of CSX's right-of-way, would reduce such adverse environmental impacts, which otherwise might prevent construction of the rail line altogether.

In order to protect its monopoly over Holcim's Holly Hill facility, CSX has adamantly opposed HolRail's Petition for Exemption.³ Consistent with its effort to deny competitive access, CSX expressly stated that it would refuse to allow HolRail to cross its property.⁴ Because CSX has denied HolRail consent to cross its property, HolRail must prepare a crossing petition under 49 U.S.C. § 10901(d).

¹ Motor truck transportation, which Holcim also uses at Holly Hill, is not competitive with transportation by rail for distances over 100 miles. For these long-distance movements, Holly Hill has no realistic transportation alternative to CSX. See Petition at 4.

² See Petition at 6-7. Because CSX has neither provided track charts nor allowed HolRail to enter its property, HolRail has been unable to ascertain the precise length of the Preferred Route, which it reasonably believes to be approximately two miles in length. After HolRail obtains data and information from CSX, it will be better able to identify the precise end points of the line on Holcim and Giant property.

³ Indeed, on December 3, 2003, CSX filed not only a Response to HolRail's petition ("Response"), but also a procedurally improper Motion to Dismiss. See 49 C.F.R. § 1121.4(c)

⁴ See Motion to Dismiss at 5.

In order to gather information necessary for its crossing petition, HolRail served its First Discovery Requests on CSX on December 23, 2003, a copy of which is attached hereto as Exhibit A. HolRail's discovery, including interrogatories, requests for production, and a request to enter upon land, is reasonably calculated to elicit information and materials from CSX that are relevant to the statutory standards for crossings at 49 U.S.C. § 10901(d)(1)(A) and (B).⁵ CSX responded to HolRail's interrogatories and requests for production on January 21, 2003 (attached hereto as Exhibit B). Subsequently, HolRail and CSX were able to resolve certain discovery disputes⁶ and agreed to defer the deadline for HolRail to file a motion to compel, until 10 days after CSX replied to correspondence from HolRail dated January 27, 2004.⁷ Because CSX has now replied and still refuses to respond to HolRail's Interrogatory Nos. 1 – 5 and Document Request No. 2,⁸ HolRail now submits this Second Motion to Compel.

II. ARGUMENT

A. **HolRail's Interrogatories and Request for Production are Directly Relevant to the Statutory Standards Applicable to a Crossing Petition at 49 U.S.C. § 10901(d).**

In its letter of March 5, 2004, CSX asserted one and the same objection to every one of HolRail's discovery requests covered by this motion. Without explanation, CSX made the conclusory assertion that each request is "irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence."⁹ This objection is

⁵ HolRail's Request for Entry Upon Land is subject to a separate motion to compel, filed February 20, 2004.

⁶ For example, in order to alleviate a purported burden on CSX, HolRail narrowed the geographic scope of scope of certain discovery requests originally covering the distance between Pregnall and Vance, SC to essentially the immediate vicinity of the Holcim and neighboring Giant Cement facilities. See Letter from J. Moreno (counsel for HolRail) to L. Gitomer (counsel for CSX) dated January 27, 2004 (attached as Exhibit C).

⁷ See Letter from L. Gitomer to J. Moreno dated March 5, 2004 (attached as Exhibit D).

⁸ Id.

⁹ Id. Apparently because of HolRail's willingness to narrow the geographic reach of its inquires, CSX has abandoned its "unduly expansive" objection raised in its Response to First Discovery Request. However, CSX has apparently continued its geographic objection in so far as HolRail's discovery goes "beyond the limits of the proposed construction."

without merit. In the following discussion, HolRail demonstrates the relevance of each request to the statutory standard at 49 U.S.C. § 10901(d) and its validity under STB precedent. HolRail also demonstrates that it is improper for CSX to raise operational concerns in its opposition to HolRail's project and then to deny HolRail the very information required to address those alleged concerns.

1. Interrogatory Nos. 1-3 properly request information about train and crew assignments on the CSX line segment that HolRail seeks to cross.

HolRail's Interrogatory Nos. 1-3 are directly relevant to the statutory standard at 49 U.S.C. § 10901(d)(1)(A) and (B). They will provide HolRail with basic information about CSX's existing operations that HolRail can evaluate to determine whether its construction and operation of the proposed line will "unreasonably" or "materially" interfere with CSX's operation of the crossed line. By denying HolRail this basic operating information, CSX wrongly prevents HolRail from proceeding with its crossing application.

Interrogatory Nos. 1-3 simply ask CSX to provide basic, baseline, data regarding train and crew assignments:

1. Identify each CSX train or crew assignment that regularly uses any portion of the line segment between Pregnall and Vance, SC.
2. Identify each train or crew assignment of any other rail carrier that regularly uses any portion of the line segment between Pregnall and Vance, SC.
3. With respect to each train or crew assignment identified in the two preceding Interrogatories, provide the following information:
 - (a) crew reporting time;
 - (b) crew reporting location;
 - (c) crew off-duty location;
 - (d) what days of the week each crew works;
 - (e) typical total time on duty per shift;

- (f) crew working limits, indicating whether a one-way trip or a round-trip (turn) is made;
- (g) principal duties;
- (h) number and type of locomotives typically used;
- (i) locomotive layover location;
- (j) number of cars handled per day;
- (k) customers served and service frequency;
- (l) daily loads and empties spotted at each customer; and
- (m) location, frequency and volume of interchange performed.

See Exhibit A at 7. By letter dated January 27, in response to CSX General Objection No. 9, HolRail agreed to narrow the scope of these requests to the CSX Line between “the current CSX switch connection into the Holcim cement plant” and “the right-of-way division between CSX and Norfolk Southern at the Giant Cement plant.” See Exhibit C at 1

These Interrogatories will allow HolRail to understand CSX’s operations over the affected line segment with respect to train operations and crew assignments. To the extent that HolRail’s construction would impact these activities, this information will provide baseline data, for comparison, as to which trains and crews, CSX and/or foreign, operate over the line, including such information as crew reporting time; crew reporting location; crew off-duty location; what days of the week each crew works; number and type of locomotives typically used, etc. HolRail needs this information in order to understand CSX’s operations so that it may identify any potential interference with crew shifts. HolRail also needs to understand the demarcation points, block limit locations, and traffic control blocks.

HolRail has offered to withdraw these three interrogatories if CSX would stipulate that the proposed crossing will not impact crew assignments, but CSX has declined to do so, despite its objection to the relevance of the interrogatories. Hence, in order to protect itself procedurally, HolRail is forced to ask the Board either to compel CSX to respond to these interrogatories or to

agree with CSX that the subject matter is irrelevant, and thus not within the scope of what HolRail must demonstrate under § 10901(d).

2. Interrogatory Nos. 4 and 5 properly request basic information about the rail transportation service that CSX provides over the line segment that HolRail seeks to cross.

HolRail's Interrogatory Nos. 4 and 5 request very basic information that have obvious relevance to CSX's operations over the crossed line segment.

4. How many carloads were handled each year on the line segment between Pregnall and Vance, SC in the last three full years for which data is available?

5. How many days per week does each rail service customer on the line segment between Pregnall and Vance, SC receive service and how many cars are spotted to each customer per week?

HolRail has agreed to narrow both requests in the same manner as Interrogatory Nos. 1-3. In addition, HolRail has agreed to narrow Interrogatory No. 5 "to nearby shippers whose traffic traverses the CSX line between the Holcim and Giant cement plants." See Exhibit C at 2.

Interrogatory No. 4 requests aggregate carload data. The number of carloads is a critical factor that influences rail operations. Without such information, Holcim has no idea how much traffic moves over the line, and thus cannot fully assess the potential impact of its proposed construction and operation of a new rail line on the operation of the CSX line.

Interrogatory No. 5 inquires directly into the frequency of service to each customer, and the number of cars spotted to each customer, per week. Plainly, the frequency and volume of rail service to nearby shippers is basic operating information that HolRail must understand if it is to demonstrate that its construction and operation of the Preferred Route will not cause "material" or "unreasonable" interference to CSX's operations.

Precedent strongly supports granting this motion to compel CSX to produce information relevant to 49 U.S.C. § 10901(d)(1)(A) and (B). For example, in STB Finance Docket Nos. 34060 and 34060 (Sub-No. 1), Midwest Generation LLC—Exemption from 49 U.S.C. 10901—For Construction in Will County, IL, etc., 2002 STB Lexis 178 at *7-8 (Served March 21, 2002) (“Midwest Generation”), the Board granted the Illinois Central Railroad Company’s motion to compel Midwest Generation, LLC to respond to certain discovery requests “relating to the potential for [Midwest’s] proposed new track to interfere with future operations” because they “[were] relevant to Midwest’s crossing petition in the Sub-No. 1 docket.” In particular, the Board ordered Midwest to provide aggregate carload volume data, like that requested by HolRail in Interrogatory No. 4. The Board’s rationale applies with equal force, here. HolRail’s discovery is directly relevant to the statutory standards for a crossing petition. Thus, CSX must provide responsive information and materials.

3. HolRail’s Request for Production No. 2 properly requests information about operations on CSX’s track adjacent to the preferred line.

HolRail’s Request for Production No. 2 is relevant and proper because it will provide necessary information and/or materials that will allow HolRail to address the statutory standards at 49 U.S.C. § 10901(d)(1)(A) and (B).

2. Produce a copy of the latest timetable covering the line segment between Pregnall and Vance, SC.

HolRail has agreed to narrow the scope of this request in the same manner as Interrogatory Nos. 1-3, above.

Railroad timetables contain a wealth of operating information, such as stations, speed limits, special operating instructions, switches, distances, etc. HolRail requires this information in order to fully evaluate the impact of its proposed construction and operation of a new rail line

upon CSX's operations. Again, Midwest Generation is squarely on point. It counsels that information and materials related to rail operations on the crossed line are relevant to the governing standard at 49 U.S.C. § 10901(d) and legitimately subject to discovery. See Midwest Generation at *7-8. Thus, it is proper for the Board to compel CSX to produce its timetable covering the section of track adjacent to the Preferred Route.

B. CSX's Refusal to Produce Relevant Information Improperly Denies HolRail the Opportunity to Address CSX's Unsupported Allegations About the Consequences of Construction Across Its Property.

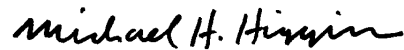
In its Motion to Dismiss and its Response, CSX objected strenuously to HolRail's proposed construction on the grounds that it would interfere with CSX's existing operations. In its Reply to the Motion to Dismiss, HolRail explained that CSX's operational concerns were irrelevant to the Board's consideration of its Petition for Exemption under 49 U.S.C. § 10501(b) and, instead, should be presented (with actual evidentiary support) in response to HolRail's crossing petition.¹⁰ Now, by denying HolRail basic data as to its operations within the line, which HolRail seeks to develop from Interrogatory Nos. 1-5 and Request for Production No. 2, CSX is preventing HolRail from gaining the very information required to address the concerns that CSX has raised. This tactic is both improper and unfairly prejudicial because HolRail cannot possibly address the unreasonable and material interference prongs of 49 U.S.C. § 10901(d)(1)(A) and (B) without being able to discern the scope of CSX's operations. C.f. STB Docket No. 42057, Public Service Company of Colorado d/b/a Xcel Energy v. The Burlington Northern and Santa Fe Railway Company, Slip op. at 3 (Served February 1, 2002) (holding that BNSF could not put fuel gauge reliability at issue and then deny Xcel Energy's discovery of information relevant to that issue).

¹⁰ In its First Set of Discovery Requests, CSX replicated this error by pursuing information about corporate board resolutions, funding allocations, adequacy of rail service, etc., that the Board has held irrelevant to issues raised in a construction exemption proceeding under 49 U.S.C § 10502(b). See Midwest Generation at *7-8.

III. CONCLUSION

As demonstrated above, CSX has improperly refused to produce information and/or materials in response to the discovery requests that are the subject of this motion. HolRail's discovery is directly relevant to the standards set forth in 49 U.S.C. § 10901(d) and necessary for preparation of its crossing petition. Moreover, it is improper for CSX to deny HolRail information that is relevant to issues that CSX has put at issue in this proceeding. Accordingly, the Board should grant HolRail's Second Motion to Compel and order CSX to respond fully to HolRail's valid discovery requests.

Respectfully submitted,



Jeffrey O. Moreno, Esq.
Michael H. Higgins, Esq.
Thompson Hine LLP
1920 N St. N.W., Suite 800
Washington, D.C. 20036
(202) 331-8800

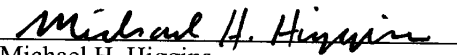
Counsel for HolRail LLC

March 15, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2004, I served a copy of HolRail's Second Motion to Compel by hand delivery on counsel for CSX Transportation, Inc., at the following address:

Louis E. Gitomer
BALL JANIK LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005



Michael H. Higgins

Exhibit A

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 34421 (Sub-No. 1)

**HOLRAIL LLC—
PETITION FOR CROSSING AUTHORITY UNDER 49 U.S.C. § 10901(d)**

**HOLRAIL LLC'S FIRST SET OF DISCOVERY REQUESTS
TO CSX TRANSPORTATION, INC.**

HolRail LLC ("HolRail"), through its counsel, hereby submits its First Set of Discovery Requests ("Requests") to CSXT Transportation, Inc. ("CSX"), pursuant to 49 C.F.R. §§ 1121.2 and 1114.21. These Requests contain Interrogatories, Requests for the Production of Documents, and a Request for Entry Upon Land for Inspection and Other Purposes.

HolRail asks that CSX furnish its responses and copies of responsive documents to the offices of Thompson Hine LLP, 1920 N Street, N.W., Suite 800, Washington, D.C. 20036, within fifteen (15) days from the date hereof. HolRail is prepared to cooperate with CSX to facilitate the expeditious and efficient production of responsive information and documents with minimum practicable burden. CSX should contact counsel for HolRail with any questions regarding these Requests.

These Requests are subject to the following Definitions and Instructions.

DEFINITIONS

1. "HolRail" means HolRail LLC.
2. "Holcim" means Holcim (US) Inc.

3. "Holly Hill" means Holly Hill, SC.
4. "Harleyville" means Harleyville, SC
5. "CSX" means CSX Transportation, Inc., its present or former employees, agents, counsel, officers, directors, managers, advisors, consultants, divisions, departments, and subsidiaries, or any of them, and all other persons acting (or who have acted) on its behalf.
6. "Facility" means the cement manufacturing plant owned and operated by Holcim, located at Holly Hill, SC in Orangeburg County.
7. "NSR" means the Norfolk Southern Railway Company.
8. "Giant" means the cement manufacturing plant operated by Giant Cement Company, Inc., located at Harleyville, SC, in Dorchester County.
9. "Four Hole Swamp" refers to the area of swamp land located, in whole or in part, within Orangeburg and Dorchester counties, SC, depicted on Exhibit A to HolRail's petition for exemption, filed November 13, 2003.
10. "Communication" means the transmittal or exchange of information of any kind in oral, written or electronic form, including e-mail.
11. "Describe" when used in relation to a communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication and a detailed summary of the content of the communications.
12. "Document" means all writings or other compilations of information, whether generated by hand, mechanical or electronic means, including, without limitation, photographs, lists, memoranda, reports, studies, notes, letters, e-mails, phone

logs, contracts, workpapers, maps, tape recordings, computer tapes, computer programs, computer printouts, computer models, statistical or financial statements, graphs, charts, sketches, note charts, plans, drawings, minutes or records of meetings, expressions or statements or policy, brochures, pamphlets, advertisements, tables, circulars, press releases, drafts, revisions of drafts, invoices, receipts, telecopies, telegrams, newsletters, notations, books, affidavits, statements, speeches, summaries, opinions, analyses, projections, evaluations, statistical records, proposals, outlines, any electronic or mechanical records or representations (including physical things such as, but not limited to, computer disks), and all other materials of any tangible medium or expression, in CSX's current or prior possession, custody or control. Further, the term "document" includes:

- (a) Both basic records and summaries of such records (including computer runs);
- (b) Both original versions and copies that differ in any respect from original versions; and
- (c) Both documents in the possession of CSX and documents in the possession of consultants, counsel, or any other person that has assisted CSX.

13. "Identify,"

- (a) when referring to a person, means to give, to the extent known, the person's full name, present or last known address, employment position, job description, phone number, and the present or last known place of employment;
- (b) when referring to a corporation, partnership, company or other business entity, means to state the name of the entity and the address and telephone number of its principal place of business;
- (c) when referring to a document, means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document;

(iv) author(s), addressee(s) or recipient(s); and (v) its present location and custodian.

14. "Including" means including without limitation.

15. "Person" means natural persons, corporations, institutions, partnerships, firms, joint ventures, associations, political subdivisions or other legal entities, as the case may be.

16. "Possession, custody, or control" refers to and includes documents actually within the possession, custody or control of CSX, and refers to and includes documents prepared by, obtained, or placed in the possession, custody, or control of any person within the scope of his or her duties or relationship to CSX; and further refers to and includes documents having been placed in the temporary possession, custody, or control of any third party by CSX. Documents are deemed to be in the possession, custody, or control of CSX if CSX has the right to secure the document, or a copy thereof from another person or entity, whether public or private, having such actual physical possession, custody, or control thereof.

17. "Provide" (except where the word is used with respect to providing service or equipment) means to supply a complete narrative response.

18. "Produce" means to make available to the undersigned for copying and viewing.

19. "Refers to" or "referring to" mean making a statement about, discussing, describing, reflecting, dealing with, consisting of, constituting, comprising, or in any way concerning, in whole or in part, the subject.

20. "Related", "related to", or "relating to" mean making a statement about, discussing, describing, reflecting, dealing with, consisting of, constituting, comprising, or in any way concerning, in whole or in part, the subject.

INSTRUCTIONS

1. Each paragraph below shall operate and be construed independently.
Unless otherwise indicated, no paragraph limits the scope of any other paragraph.
2. Each Interrogatory should be responded to separately and fully in writing, unless it is objected to, in which event the reasons for objection should be stated.
3. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.
4. Unless otherwise specified, these requests cover calendar years 2000 to the date of response.
5. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable:
 - (a) Identify the nature of the information or document;
 - (b) Identify the subject matter of the information or document, i.e., briefly describe the contents of the document;
 - (c) Identify the author and all addressees or recipients of the document and indicate whether any of those individuals are attorneys;
 - (d) Identify the date of the document; and
 - (e) State the nature of the claim that the information or document is privileged.
6. If the production of any requested document is withheld for claimed grounds other than privilege or attorney work product, state with specificity the basis for such withholding.

7. If any document called for by any Request for the Production is not available or accessible, CSX should provide sufficient explanation of the reasons, as well as an identification of the unavailable or inaccessible document(s).

8. If any document or information called for by these Requests is available in computerized format, produce the document or information in that format, along with a description of the software utilized, instruction books, and all other material necessary to translate the documents or information from computerized to hard copy format.

9. If CSX knows or later learns that its response to any request is incorrect, it should correct that response.

10. Subject to Instruction 12, all documents should be produced or made available for inspection in the form in which they are retained by CSX in its usual course of business, unless otherwise agreed by HolRail.

11. These Requests are continuing in nature, and CSX should supplement its responses if it becomes aware of additional responsive information or documents subsequent to its initial response to these requests.

12. The produced documents should be organized or numbered in such a manner that HolRail may readily determine which documents are being produced in response to each specific request. If no document is produced in response to any specific request, please so indicate in the response.

13. The Requests for the Production of Documents contained herein apply to all documents within the possession, custody, or control of CSX.

INTERROGATORIES

1. Identify each CSX train or crew assignment that regularly uses any portion of the line segment between Pregnall and Vance, SC.
2. Identify each train or crew assignment of any other rail carrier that regularly uses any portion of the line segment between Pregnall and Vance, SC.
3. With respect to each train or crew assignment identified in the two preceding Interrogatories, provide the following information:
 - (a) crew reporting time;
 - (b) crew reporting location;
 - (c) crew off-duty location;
 - (d) what days of the week each crew works;
 - (e) typical total time on duty per shift;
 - (f) crew working limits, indicating whether a one-way trip or a round-trip (turn) is made;
 - (g) principal duties;
 - (h) number and type of locomotives typically used;
 - (i) locomotive layover location;
 - (j) number of cars handled per day;
 - (k) customers served and service frequency;
 - (l) daily loads and empties spotted at each customer; and
 - (m) location, frequency and volume of interchange performed.
4. How many carloads were handled each year on the line segment between Pregnall and Vance, SC in the last three full years for which data is available?
5. How many days per week does each rail service customer on the line segment between Pregnall and Vance, SC receive service and how many cars are spotted to each customer per week?
6. On the portion of the CSX line between Giant and the Facility, has CSX experienced washouts, areas of track sloughing off or unusual amounts of track settlement requiring: (a) smoothing or surfacing of track; (b) slow orders or (c) taking the

track out of service? If yes, describe the cause of the problem and the method of remediation, and indicate the corresponding dates.

7. If beavers, soil boring animals, or other pests cause any problems for CSX's operations over the portion of its line between Giant and the Facility, then explain how CSX controls, remedies, or eliminates the problem.

8. Describe how CSX accomplishes brushcutting, clearing, and weed control on the portion of the CSX line between Giant and the Facility.

9. Provide dates of latest Program (Capital) work including, but not limited to: rail, T&S, surfacing, undercutting, rail grinding and scope of work for the portion of CSX's line between Giant and the Facility.

10. Identify the CSX employee most knowledgeable about soil conditions along the portion of the CSX line between Giant and the Facility, or within Four Hole Swamp and explain in detail the basis for his or her knowledge.

11. Identify any studies or analyses that CSX has performed regarding soil conditions along the portion of the CSX line between Giant and the Facility, or within Four Hole Swamp.

12. Identify any third-party contractor that CSX has retained, engaged or hired to perform or provide maintenance work, construction, or repairs along the portion of the CSX line between Giant and the Facility.

REQUESTS FOR THE PRODUCTION OF DOCUMENTS

1. Produce all documents relating to CSX's responses to HolRail's Interrogatories.

2. Produce a copy of the latest timetable covering the line segment between Pregnall and Vance, SC.
3. Produce the latest track chart covering the area between Pregnall and Vance, SC.
4. Produce all documents relating to curve information not contained within, or obtainable from, the track chart furnished in response to Document Request no. 3.
5. Produce copies of the latest bridge and/or culvert inspection reports for all such structures along the CSX line between Giant and the Facility. Bridge and culvert information should include:
 - (a) condition;
 - (b) latest inspection date;
 - (c) type of construction material;
 - (d) drainage structure width and length (include opening size);
 - (e) load rating (if available);
 - (f) recent replacement or repairs to structures; and
 - (g) recommended remedial action and necessary repairs (if any).
7. Produce all documents related to the design and location of all bridges and culverts along the CSX line between Giant and the Facility, including engineering or architectural drawings.
8. Produce all documents relating to slope stabilization for rail operations along the CSX line between Giant and Holly Hill (non-emergency).
9. Produce the most recent version of right-of-way maps for the line segment between Pregnall and Vance, SC.
10. Provide copies of latest track geometry car findings covering the line segment between Pregnall and Vance, SC.

11. Produce all track inspection reports covering the line segment between Pregnall and Vance, SC for the last two years.

11. Produce all documents referring to soil conditions along the CSX line between Giant and the Facility, or within Four Hole Swamp.

12. Produce a map, or maps, of the CSX line between Giant and the Facility that depict(s): (a) the rails, ties, tracks, switches, sensors, bridges, culverts, fences, subsurface utilities, or any other structures that CSX uses or has constructed, or (b) any combination of the foregoing.

13. Produce all documents prepared by or for CSX since January 1, 1999 that refer or relate to any plans to add to, or improve upon the rail infrastructure between Pregnall and Vance, SC.

**REQUEST FOR ENTRY UPON LAND
FOR INSPECTION AND OTHER PURPOSES**

1. HolRail requests access to CSX's right-of-way and property between the Facility and Giant for inspection of the rail line, the land, CSX's rail operations, and other lawful purposes consistent with 49 C.F.R. § 1114.30(a)(2).

Respectfully submitted,

Michael H. Higgins

Jeffrey O. Moreno, Esq.

Michael H. Higgins, Esq.

THOMPSON HINE, LLP

1920 N Street, N.W. Suite 800

Washington, D.C. 20036

(202) 331-8800 (telephone)

(202) 331-8330 (fax)

Counsel for HolRail, LLC

December 23, 2003

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing First Set of Discovery Requests to CSX Transportation, Inc. were served by hand delivery on December 23, 2003 upon the following:

Louis E. Gitomer
BALL JANIK LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005

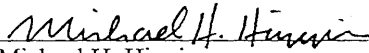

Michael H. Higgins

Exhibit B

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34421

HOLRAIL LLC-PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT
AND OPERATE A RAIL LINE IN ORANGEBURG AND DORCHESTER COUNTIES,
SOUTH CAROLINA

CSX TRANSPORTATION, INC. RESPONSE TO FIRST DISCOVERY REQUEST

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

Louis E. Gitomer, Esq.
Of Counsel
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, DC 20005
(202) 638-3307

Attorneys for: CSX TRANSPORTATION,
INC.

Dated: January 21, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34421

HOLRAIL LLC-PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT
AND OPERATE A RAIL LINE IN ORANGEBURG AND DORCHESTER COUNTIES,
SOUTH CAROLINA

CSX TRANSPORTATION, INC. RESPONSE TO FIRST DISCOVERY REQUEST

CSX Transportation, Inc. ("CSXT") responds to the Discovery Requests of HolRail LLC
("HolRail") served on December 23, 2003 (the "Discovery Request").

GENERAL RESPONSES

The following general responses are made with respect to all of the discovery requests.

1. CSXT has conducted a reasonable search for responsive documents and information to respond consistent with the stated objections.¹
2. Where objections have been raised to the scope of the request, CSXT is willing to discuss searching for and producing documents or information covered by a more limited request taking into account the stated objection.
3. Production of information or documents does not necessarily imply that they are relevant to this proceeding, and is not to be construed as waiving any applicable objection.

GENERAL OBJECTIONS

¹ Thus, any response that states that responsive documents are being produced is subject to the General Objections, so that, for example, any documents subject to attorney-client privilege or the work product doctrine are not being produced.

The following general objections are made with respect to all of the discovery requests. Any additional specific objections are stated at the beginning of the response to each discovery request.

1. CSXT objects to production of, and is not producing, documents or information subject to the attorney-client privilege, the work product doctrine, or administratively confidential documents or information.
2. CSXT objects to production of, and is not producing, documents prepared in connection with, or information relating to, possible settlement of this or any other matter.
3. CSXT objects to production of, and is not producing, public documents or information that is readily available, including but not limited to documents on public file at the Surface Transportation Board ("STB"), the Securities and Exchange Commission, or any other government agency or court, or that have appeared in newspapers or other public media.
4. CSXT objects to the production of, and is not producing, information or documents that are as readily attainable by HolRail from its own files.
5. CSXT objects to the production of, and is not producing, information or documents containing confidential or sensitive commercial information, including information subject to disclosure restrictions imposed by law in other proceedings or by contractual obligation to third parties, and that is of insufficient materiality to warrant production here even under a protective order.

6. CSXT objects to the production of, and is not producing, information or documents to the extent they are sought in a form not maintained by CSXT in the regular course of business and are not readily available in the form requested, on the ground that such documents or information could only be developed, if at all, through unduly burdensome and oppressive special studies, which are not ordinarily required and which CSXT objects to performing.

7. CSXT objects to HolRail's Definitions and Instructions to the extent that they seek to impose requirements that exceed those specified in the applicable discovery rules and guidelines.

8. CSXT objects to all discovery sought by HolRail because HolRail has no legitimate use for the material requested in discovery under the procedure HolRail selected to prosecute this proceeding before the Surface Transportation Board under 49 C.F.R. § 1121, which does not permit HolRail to respond to CSXT's Response as a matter of right.

9. CSXT objects to discovery sought by HolRail outside the physical limits of the construction proposed by HolRail.

INTERROGATORIES

1. Identify each CSX train or crew assignment that regularly uses any portion of the line segment between Pregnall and Vance, SC.

Objection: CSXT objects to this interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. CSXT further objects to this interrogatory as unduly expansive in that it seeks information that is outside the geographic scope of this proceeding and will be unduly burdensome to produce.

2. Identify each train or crew assignment of any other rail carrier that regularly uses any portion of the line segment between Pregnall and Vance, SC.

Objection: CSXT objects to this interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. CSXT

further objects to this interrogatory as unduly expansive in that it seeks information that is outside the geographic scope of this proceeding and will be unduly burdensome to produce.

3. With respect to each train or crew assignment identified in the two preceding Interrogatories, provide the following information:

- (a) crew reporting time;
- (b) crew reporting location;
- (c) crew off-duty location;
- (d) what days of the week each crew works;
- (e) typical total time on duty per shift;
- (f) crew working limits, indicating whether a one-way trip or a round-trip (turn is made;
- (g) principal duties;
- (h) number and type of locomotives typically used;
- (i) locomotive layover location;
- (j) customers served and service frequency;
- (k) customers served and service frequency;
- (l) daily loads and empties spotted at each customer; and
- (m) location, frequency and volume of interchange performed.

Objection: CSXT objects to this interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. CSXT further objects to this interrogatory as unduly expansive in that it seeks information that is outside the geographic scope of this proceeding and will be unduly burdensome to produce.

4. How many carloads were handled each year on the line segment between Pregnall and Vance, SC in the last three full years for which data is available?

Objection: CSXT objects to this interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. CSXT further objects to this interrogatory as unduly expansive in that it seeks information that is outside the geographic scope of this proceeding and will be unduly burdensome to produce.

5. How many days per week does each rail service customer on the line segment between Pregnall and Vance, SC receive service and how many cars are spotted to each customer per week?

Objection: CSXT objects to this interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. CSXT further objects to this interrogatory as unduly expansive in that it seeks information that is outside the geographic scope of this proceeding and will be unduly burdensome to produce.

6. On the portion of the CSX line between Giant and the Facility, has CSX experienced washouts, areas of track sloughing off or unusual amounts of track settlement requiring: (a) smoothing or surfacing of track; (b) slow orders or (c) taking the track out of service? If yes, describe the cause of the problem and the method of remediation, and indicate the corresponding dates.

Response: Yes. CSXT will produce documents responsive to this interrogatory.

7. If beavers, soil-boring animals, or other pests cause any problems for CSX's operations over the portion of its line between Giant and the Facility, then explain how CSX controls, remedies or eliminates the problem.

Response: CSXT will produce documents responsive to this interrogatory.

8. Describe how CSX accomplishes brushcutting, clearing, and weed control on the portion of the CSX line between Giant and the Facility.

Response: CSXT will produce documents responsive to this interrogatory.

9. Provide dates of latest Program (Capital) work including, but not limited to: rail, T&S, surfacing, undercutting, rail grinding and scope of work for the portion of CSX's line between Giant and the Facility.

Response: CSXT will produce documents responsive to this interrogatory.

10. Identify the CSX employee most knowledgeable about soil conditions along the portion of the CSX line between Giant and the Facility, or within Four Hole Swamp and explain in detail the basis for his or her knowledge.

Response: CSXT will produce documents responsive to this interrogatory.

11. Identify any studies or analyses that CSX had performed regarding soil conditions along the portion of the CSX line between Giant and the Facility, or within Four Hole Swamp.

Response: CSXT will produce documents responsive to this interrogatory.

12. Identify any third-party contractor CSX has retained, engaged or hired to perform or provide maintenance work, construction, or repairs along the portion of the CSX line between Giant and the Facility.

Response: CSXT will produce documents responsive to this interrogatory.

REQUESTS FOR THE PRODUCTION OF DOCUMENTS

1. Produce all documents relating to CSX's responses to HolRail's Interrogatories.

Response: CSXT will produce documents responsive to this document request.

2. Produce a copy of the latest timetable covering the line segment between Pregnall and Vance, SC.

Objection: CSXT objects to this document request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. CSXT further objects to this document request as unduly expansive in that it seeks information that is outside the geographic scope of this proceeding and will be unduly burdensome to produce.

3. Produce the latest track chart covering the area between Pregnall and Vance, SC.

Objection: CSXT objects to this document request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. CSXT further objects to this document request as unduly expansive in that it seeks information that is outside the geographic scope of this proceeding and will be unduly burdensome to produce.

4. Produce all documents relating to curve information not contained within, or obtainable from, the track chart furnished in response to Document Request No. 3.

Objection: CSXT objects to this document request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. CSXT further objects to this document request as unduly expansive in that it seeks information that is outside the geographic scope of this proceeding and will be unduly burdensome to produce.

5. Produce copies of the latest bridge and/or culvert inspection reports for all such structures along the CSX line between Giant and the Facility. Bridge and culvert information should include:

- (a) condition;
- (b) latest inspection date;
- (c) type of construction material;
- (d) drainage structure width and length (include opening size);
- (e) load rating (if available);
- (f) recent replacement or repairs to structures; and
- (g) recommended remedial action and necessary repairs (if any).

Objection: CSXT objects to this document request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

7. Produce all documents related to the design and location of all bridges and culverts along the CSX line between Giant and the Facility, including engineering or architectural drawings.

Objection: CSXT objects to this document request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

8. Produce all documents relating to slope stabilization for rail operations along the CSX line between Giant and Holly Hill (non-emergency).

Response: CSXT will produce documents responsive to this document request.

9. Produce the most recent version of right-of-way maps for the line segment between Pregnall and Vance, SC.

Objection: CSXT objects to this document request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. CSXT further objects to this document request as unduly expansive in that it seeks information that is outside the geographic scope of this proceeding and will be unduly burdensome to produce.

10. Provide copies of latest track geometry car findings covering the line segment between Pregnall and Vance, SC.

Objection: CSXT objects to this document request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. CSXT further objects to this document request as unduly expansive in that it seeks information that is outside the geographic scope of this proceeding and will be unduly burdensome to produce.

11. Produce all track inspection reports covering the line segment between Pregnall and Vance, SC for the last two years.

Objection: CSXT objects to this document request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. CSXT further objects to this document request as unduly expansive in that it seeks information that is outside the geographic scope of this proceeding and will be unduly burdensome to produce.

11. Produce all documents referring to soil conditions along the CSX line between Giant and the Facility, or within Four Hole Swamp.

Response: CSXT will produce documents responsive to this document request.

12. Produce a map, or maps, of the CSX line between Giant and the Facility that depict(s): (a) the rails, tie, tracks, switches, sensors, bridges, culverts, fences, subsurface utilities, or any other structures that CSX uses or has constructed, or (b) any combination of the foregoing.

Response: CSXT will produce documents responsive to this document request.

13. Produce all documents prepared by or for CSX since January 1, 1999 that refer or relate to any plans to add to, or improve upon the rail infrastructure between Pregnall and Vance, SC.

Objection: CSXT objects to this document request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. CSXT further objects to this document request as unduly expansive in that it seeks information

that is outside the geographic scope of this proceeding and will be unduly burdensome to produce.

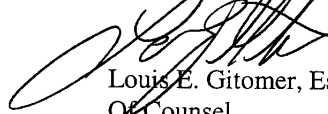
**REQUEST FOR ENTRY UPON LAND
FOR INSPECTION AND OTHER PURPOSES**

1. HolRail requests access to CSX's right-of-way and property between the Facility and Giant for inspection of the rail line, the land, CSX's rail operations, and other lawful purposes consistent with 49 C.F.R. § 1114.30(a)(2).

Response: CSXT responded to this request by letter dated January 12, 2004.

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

Respectfully submitted,



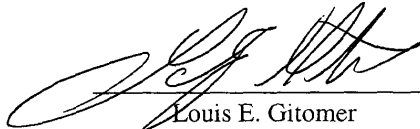
Louis E. Gitomer, Esq.
Of Counsel
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, DC 20005
(202) 638-3307

Attorneys for: CSX TRANSPORTATION,
INC.

Dated: January 21, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served by hand delivery
on all parties of record in STB Finance Docket No. 34421.



Louis E. Gitomer
January 21, 2004

Exhibit C

January 27, 2004

By Fax

Louis E. Gitomer
Ball Janik LLP
1455 F Street, NW
Suite 225
Washington, DC 20005

RE: Finance Docket No. 34421 (Sub-No. 1), *Holrail LLC -- Petition for Crossing Authority*
Under 49 U.S.C. 10901(d)

Dear Lou:

This letter summarizes our teleconference yesterday to discuss the responses and objections of CSX Transportation, Inc. ("CSX") to the First Set of Discovery Requests by HolRail LLC ("HolRail"). In our conversation, I explained the rationale behind several of the HolRail requests to which CSX has objected and I narrowed the scope of other requests. Based upon our discussions, you have agreed to consult with your client about providing responses to some additional requests. A point-by-point summary of our discussion is presented below.

General Objection No. 5

To the extent that CSX is withholding responsive documents based upon this objection, you have agreed to provide a list of such documents, or to state that none exist.

General Objection No. 9

This objection relates primarily to those HolRail discovery requests that define their geographic scope in terms of the CSX line segment between Pregnall and Vance. HolRail has agreed to narrow the scope of those requests in two different ways. First, on those requests that relate to engineering of the CSX line (Document Request Nos. 3-5, 7, and 10-11), HolRail agrees to narrow the scope to the CSX line between the following two points: (a) one-half mile north of the current CSX switch connection into the Holcim cement plant, and (b) one half mile south of the right-of-way division between CSX and Norfolk Southern at the Giant cement plant.¹ Second, on those requests that relate to operations over the CSX line (Int. No. 1-5 and Document Request Nos. 2, 9 and 13), HolRail agrees to the same scope as the engineering requests, less the one-half mile extension. Additional refinements are discussed for individual discovery requests, below.

¹ This letter more specifically identifies the two points than I was able to provide in our teleconference.

January 27, 2004
Page 2

Interrogatory Nos. 1-3

These requests are an attempt to understand CSX's operation, with respect to crew assignments, so that HolRail may determine any potential impact upon CSX operations, in order to satisfy the requirements of 49 U.S.C. § 10901(d). HolRail is willing to drop these interrogatories if CSX is willing to stipulate that HolRail's proposed crossing of CSX's right-of-way will not impact crew assignments.

Interrogatory No. 4

This request inquires about the carloads handled by CSX, so that HolRail can determine the effect of its proposed crossing on CSX operations.

Interrogatory No. 5

This request inquires about the frequency of CSX service to its customers, so that HolRail can determine the effect of its proposed crossing on CSX operations. HolRail has agreed to limit this request to nearby shippers whose traffic traverses the CSX line between the Holcim and Giant cement plants.

Document Request No. 2

This request asks for CSX's timetables, which show stations, speed limits, special operating instructions, switches, distances, etc. This information pertains to operational issues and are relevant to HolRail's assessment of the impact of its proposed crossing on CSX operations.

Document Request Nos. 3-4

These requests ask for track chart and curve information in order to identify the culverts, bridges, switches and other infrastructure on the existing CSX line. This information will enable HolRail to line up its culverts and bridges with CSX's infrastructure to avoid any adverse effects on water flow, to mirror CSX track to avoid impacts on its substructure, and to mirror CSX curves to avoid crowding the CSX line. This information is similar to the information that CSX has agreed to produce in response to Interrogatory No. 9.

Document Request Nos. 5 & 7

These requests ask for bridge and culvert inspection reports and bridge design and location information. These are relevant to the condition of the bridges and will influence the type of bridges that HolRail would use in order to minimize any effects on the CSX line. For example, a

January 27, 2004
Page 3

track inspection report would reveal a plugged culvert that CSX has allowed to remain plugged for a long time. Since a plugged culvert affects water flow, HolRail would want to account for this in its design.

Document Request No. 9

CSX's right-of-way maps are needed in order to identify precisely what parts of the CSX right-of-way HolRail will need to cross.

Document Request Nos. 10 and 11

These requests ask for track geometry reports and track inspection reports. This information will enable HolRail to identify any weak areas of structure that may exist on the CSX line, such as an undersized culvert, so that HolRail's construction will not affect the CSX line. Such information also will reveal any history of problem areas so that HolRail will know if additional engineering is required on its proposed line in order to avoid an impact on the CSX line. In the alternative, in lieu of producing the requested information, HolRail would accept a CSX statement that there are no engineering defects in the line segment between the Giant and Holcim cement plants.

Document Request No. 13

This request is relevant to the extent that HolRail's proposed crossing might interfere with any CSX plans to add or improve its infrastructure between the Giant and Holcim cement plants. In addition, any CSX plans to add or improve infrastructure on this line segment, such as double track, could contradict CSX's own arguments in opposition to HolRail's construction.

Request for Entry Upon Land

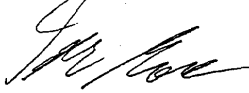
Pursuant to a letter from you dated January 12, 2004, CSX has agreed to HolRail's request to enter onto the CSX right-of-way for inspection, subject to three conditions. Based upon our conversation, I understand CSX's third condition to require that HolRail physically cross CSX track, not just the right-of-way, and that the inspection would be limited only to that area immediately adjacent to the physical crossing of track. HolRail disagrees with this limitation and, in any event, would require access to a greater portion of CSX's property to perform soil stability analyses to address CSX's concern that HolRail's proposed crossing of CSX's right-of-way would undermine the existing CSX infrastructure. The parties appear to be at an impasse on this issue.

* * *

January 27, 2004
Page 4

Under the Board's discovery regulations, HolRail's deadline to file a motion to compel discovery of CSX is Monday, February 2, 2004. In order to facilitate our negotiation of these discovery disputes, however, we have agreed that a motion to compel will not be due until ten days after CSX responds to this letter, informing HolRail of CSX's decision whether to respond to any additional discovery requests as explained and/or narrowed herein.

Sincerely,



Jeffrey O. Moreno

Exhibit D

BALL JANIK LLP

A T T O R N E Y S

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

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

lgitomer@dc.bjllp.com

TELEPHONE 202-638-3307
FACSIMILE 202-783-6947
March 5, 2004

Jeffery O. Moreno, Esq.
Thompson Hine LLP
1920 N Street, N.W.
Washington, D.C. 20036-1600

RE: Finance Docket No. 34421, *HolRail LLC-Petition for Exemption from 49 U.S.C. § 10901 to Construct and Operate a Rail Line in Orangeburg and Dorchester Counties, South Carolina*

Dear Jeff:

CSX Transportation, Inc. ("CSXT") is submitting the supplemental responses to HolRail LLC's ("HolRail") First Set of Discovery Requests, as modified by your letter dated January 27, 2004.

General Objection No. 5. CSXT will provide a list of documents withheld pursuant to this objection, if any exist.

General Objection No. 9. CSXT continues to object to HolRail's geographic description to the extent that it extends beyond the limits of the proposed construction.

Interrogatory Nos. 1-5. CSXT continues to object to these interrogatories as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 2. CSXT continues to object to this document request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Document Request Nos. 3-4. As amended by HolRail, and without waiving its prior objections, CSXT will produce documents responsive to these document requests, if any exist.

Document Request Nos. 5&7. As amended by HolRail, and without waiving its prior objections, CSXT will produce documents responsive to these document requests, if any exist.

Document Request No. 9. As amended by HolRail, and without waiving its prior objections, CSXT will produce documents responsive to this document request, if any exist.

BALL JANIK LLP

Jeffery O. Moreno, Esq.
Page 2
March 5, 2004

Document Request Nos. 10 and 11. CSXT has previously stated that it will provide documents responsive to the second Document Request No. 11. As amended by HolRail, and without waiving its prior objections, CSXT will produce documents responsive to these document requests, specifically including the first Document Request No. 11, if any exist.

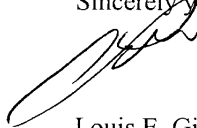
Document Request No. 13. As amended by HolRail, and without waiving its prior objections, CSXT will produce documents responsive to this document request, if any exist.

Request for Entry Upon Land. CSXT agrees that the parties are at an impasse on this issue.

As we previously agreed, CSXT does not object to HolRail filing a motion to compel with the Surface Transportation Board within 10 days of the date of this letter.

If you have any questions, please call or email me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Louis E. Gitomer", written over the typed name.

Louis E. Gitomer
Attorney for CSX Transportation, Inc.