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September 1, 2005

BY HAND DELIVERY

Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 711  
Washington, D.C. 20423-0001

ENTERED  
Office of Proceedings

SEP 1 2005

Part of  
Public Record



Re: Finance Docket No. 34730, James George and J&JG  
Holding Company, Inc. – Continuance in Control  
Exemption – Saginaw Bay Southern Railway Company

Dear Secretary Williams:

Enclosed for filing in the referenced docket please find an original and 10 copies of the Verified Petition for Exemption of James George and J&JG Holding Company, together with a WordPerfect diskette containing the filing in electronic form. We are also submitting a check in the amount of \$7,600.00 to cover the applicable filing fee.

An additional copy of the Petition also is enclosed. Kindly indicate receipt of the filing by time-stamping this extra copy and returning it to the bearer of this letter. Thank you for your consideration in this matter.

Sincerely,

**FEE RECEIVED**

SEP 1 2005

SURFACE  
TRANSPORTATION BOARD

Enclosures

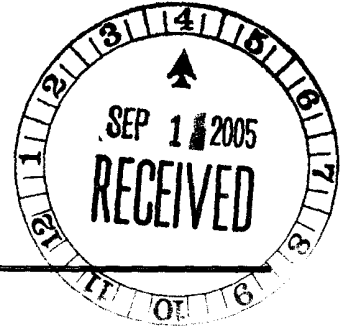
Andrew B. Kolesar III  
An Attorney for James George and  
J&JG Holding Company, Inc.

**FILED**

SEP 1 - 2005

SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD



JAMES GEORGE AND J&JG HOLDING  
COMPANY, INC. – CONTINUANCE IN  
CONTROL EXEMPTION – SAGINAW  
BAY SOUTHERN RAILWAY COMPANY

Finance Docket No. 34730

**FEE RECEIVED**

SEP 1 2005

SURFACE  
TRANSPORTATION BOARD

**VERIFIED PETITION FOR EXEMPTION**

– EXPEDITED CONSIDERATION REQUESTED –

ENTERED  
Office of Proceedings

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Public Record

James George (“George”) and J&JG Holding Company, Inc. (“J&JG”)

(collectively, “Applicants”), pursuant to 49 U.S.C. § 10502 and 49 C.F.R. Part 1121, et seq., hereby petition the Board to exempt their continuance of control over J&JG’s wholly owned subsidiary, Saginaw Bay Southern Railway Company (“SBS”), from the prior approval requirements of 49 U.S.C. § 11323, et seq. upon the latter’s becoming a carrier through its anticipated acquisition of certain rail lines (the “Line”) owned by CSX Transportation, Inc. (“CSXT”).<sup>1</sup> Applicants currently control Lake State Railway Company (“Lake State”), a class III rail carrier.<sup>2</sup>

**FILED**

SEP 1 - 2005

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<sup>1</sup> See Finance Docket No. 34729, Saginaw Bay Southern Railway Company – Acquisition and Operation Exemption – Rail Line of CSX Transportation, Inc. in Bay, Saginaw, Genesee, and Midland Counties, MI (Notice of Exemption filed September 1, 2005).

<sup>2</sup> As indicated in SBS’s Notice of Exemption, SBS intends to provide service over the Line through the use of Lake State as a contract carrier, although SBS will be the only entity that holds the responsibility for providing common carrier service on the Line.

Business considerations with respect to the transaction between SBS and CSXT dictate that SBS become a rail carrier on or about October 28, 2005.<sup>3</sup> It is contemplated that operation of the Line by SBS will generate efficiencies and enhanced rail service because it will provide shippers with service from a local operator that will be part of a family of rail carriers that is located entirely within the immediate geographic area. In that regard, Applicants do not anticipate that there will be any opposition to the SBS acquisition. In addition, successful operation of the Line by SBS will be enhanced if initial business decisions regarding the Line can be made without the need to operate under a voting trust arrangement. Applicants therefore respectfully request expedited consideration of this matter to avoid the necessity of placing the shares of SBS into a voting trust pending the Board's decision with respect to this Petition. See Finance Docket No. 34545, Genesee & Wyoming, Inc. – Continuance in Control Exemption – Tazewell & Peoria Railroad, Inc. (STB served October 1, 2004), at 3.<sup>4</sup>

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<sup>3</sup> SBS and CSXT are close to finalizing the terms of their agreement on the proposed acquisition transaction, and expect to complete negotiations by the October 28, 2005 closing date. Under their intended transaction, the possessor and operator of the Line will change, but the general nature of the operations will remain the same.

<sup>4</sup> By filing dated August 24, 2005, an informal opinion from the Board's Staff was sought regarding the suitability of a proposed Voting Trust Agreement that Applicants will utilize if necessary.

In support hereof, Applicants respectfully show as follows:

- (a) Person to Whom Correspondence with  
Respect to this Petition Should be Addressed

Andrew B. Kolesar III  
Slover & Loftus  
1224 Seventeenth St., N.W.  
Washington, D.C. 20036

- (b) Description, Timing and Purpose  
of the Transaction  
(49 C.F.R. § 1180.6(a)(1)(i) - (iii))

George is a citizen of the State of Michigan, and his address is P.O. Box 232, 323 Newman Street, East Tawas, Michigan. George's telephone number is 989-362-3465. George controls J&JG Holding Company, Inc. through a revocable, living trust of which he is the trustee (i.e., "James George Revocable Living Trust U/A/D April 10, 1992").

J&JG is a Michigan corporation with a principal office address at 323 Newman Street, East Tawas, MI 48730. Neither George nor J&JG is a "carrier" within the meaning of the ICC Termination Act Amendments of 1995 (49 U.S.C. § 10101, et seq.). However, the Applicants control a Class III rail carrier operating in Michigan; i.e., Lake State Railway Company.<sup>5</sup> Lake State's lines extend from Bay City, Michigan north to Alpena and Gaylord, Michigan.

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<sup>5</sup> See Finance Docket No. 33372, Lake State Railway Co. – Lease and Operation Exemption – Detroit & Mackinac Railway Co. (STB served March 28, 1997).

In addition, the Applicants control SBS, currently a non-carrier, which is negotiating an agreement to acquire approximately 67-miles of rail lines in Michigan currently owned by CSXT, including the lines of railroad from: Milepost CC 0.0 at the Saginaw station to Milepost CC 26.2 at the Mt. Morris station; from Milepost CB 0.0 at the Saginaw station to Milepost CB 17.37 at the Midland station; from Milepost CBB 0.0 at the Saginaw station to Milepost CBB 16.7 at the Essexville station; from Milepost CBC 0.0 to Milepost CBC 2.0 both at the Saginaw Station; from Milepost CBD 2.2 to Milepost CBD 4.5 both at the Saginaw Station; from Milepost CSF 0.0 to Milepost CSF 0.82 both at the Saginaw Station; and from Milepost CBE 7.72 to Milepost CBE 10.09 both at the Paines Station. Upon the completion of the SBS/CSXT transaction and the receipt of the requisite STB authorization, SBS will become a rail carrier.

Under normal circumstances, SBS's Notice of Exemption regarding the CSXT line acquisition would be accompanied by a Verified Notice of Exemption on behalf of Applicants under 49 C.F.R. § 1180.2(d)(2) to enable Applicants to continue in control of SBS after SBS becomes a carrier. Cf. 49 U.S.C. § 11323(a)(5). Because SBS's new lines will connect with those of Lake State near Bay City, Michigan, however, Applicants are not eligible for the automatic, seven-day exemption offered under 49 C.F.R. § 1180.2(d)(2). It is for that reason that Applicants are proceeding through the instant Petition for an individual exemption. See, e.g., Finance Docket No. 34299, Gulf & Ohio Railways Holding Co., Inc., H. Peter Claussen and Linda C. Claussen –

Continuance in Control Exemption – Chattahoochee & Gulf Railroad Co., Inc. (STB served May 16, 2003) (granting petition for exemption to continue in control of carrier that would connect with the lines of another carrier under common control).

As explained in further detail below, Applicants' continuance of control of SBS easily meets the criteria for an individual exemption set out in 49 U.S.C. § 10502(a). The continuance in control: (1) will promote several national rail transportation policy goals; (2) is limited in scope; and (3) raises no threat to subject shippers to abuse of market power. Therefore, Applicants respectfully urge the Board to grant this Petition.

- (c) List of States in Which Property  
of Each Applicant is Situated  
(49 C.F.R. § 1180.6(a)(5))

The rail property to be leased and operated by SBS is located in Michigan. The rail properties of Lake State, which is the only other carrier controlled by the Applicants, also are located in Michigan.

- (d) Map  
(49 C.F.R. § 1180.6(a)(6))

A map depicting the lines subject to the SBS/CSXT acquisition transaction is attached as Exhibit No. 1. This map also depicts the lines of Lake State.

- (e) Agreement  
(49 C.F.R. § 1180.6(a)(7)(ii))

There is no agreement specific to Applicants' control of SBS.

## ARGUMENT

Section 10502(a) of the Act provides that “the Board, to the maximum extent consistent with this part, shall exempt a person . . . or a transaction . . .” when it finds the conditions set forth in Section 10502(a)(1) (consistency with rail transportation policy), and either Section 10502(a)(2)(A) (limited scope) or (2) Section 10502(a)(2)(B) (no abuse of market power) to be met. In this case, all three criteria are satisfied.

A. Regulation is Not Needed to Carry  
Out the National Rail Transportation Policy

Detailed scrutiny of Applicants’ continuance in control over SBS is not needed to carry out the transportation policy goals of 49 U.S.C. § 10101. To the contrary, an exemption from the formal prior approval requirements will promote several of these goals. By minimizing resource expenditures both by the Applicants and the Board, an exemption would expedite agency decision making (Section 10101(2)) and reduce barriers to entry (Section 10101(7)). Similarly, by enabling the Applicants to integrate SBS into their family of Class III railroads, an exemption will foster sound economic conditions (Section 10101(5)) and encourage efficient rail carrier management (Section 10101(9)). See Finance Docket No. 34026, Summit View, Inc. – Control Exemption – Mahoning Valley Railroad Company (STB served May 17, 2001) (enabling a carrier to become part of a family of small carriers furthers the Rail Transportation Policy).

Equally important, no elements of the rail transportation policy would be adversely affected by Applicants’ continuance in control. As noted supra, but for the

connection between SBS and Lake State near Bay City, Michigan, the subject transaction would qualify for the class exemption promulgated at 49 C.F.R. § 1180.2(d)(2) (“[t]he Board has found that its prior review and approval of these transactions is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; . . .”). See, e.g., Finance Docket No. 32904, Genessee & Wyoming Inc. – Continuance In Control Exemption – Pittsburgh & Shawmut Railroad, Inc. (STB served June 21, 1996) at 5. If anything, in this case the connection promotes elements of the policy, as it will foster improved operating efficiency without foreclosing any transportation options presently open to shippers in the area. See Finance Docket No. 33942, USX Corporation – Control Exemption – Transtar, Inc. (STB served November 30, 2000); Finance Docket No. 33678, Emons Transportation Group, Inc. and Emons Railroad Group, Inc. – Continuance In Control Exemption – St. Lawrence & Atlantic Railroad (STB served November 20, 1998).

The SBS acquisition transaction (and the Applicants’ continuance in control of SBS) also will not result in any competitive harm. No shipper will lose a competitive service option as a result of the transaction. Instead, shippers located along the subject Line who currently receive service from two independent rail carriers will continue to receive the benefit of such service.

B. The Transaction is Limited in Scope

The SBS acquisition is limited to only 67 miles of rail line, and all of SBS's operations will be concentrated in the immediate vicinity of Saginaw, Michigan.<sup>6</sup> As noted supra, the control transaction at issue would be exempt automatically under 49 C.F.R. Part 1180.2(d) but for the fact that SBS's tracks connect with those of Lake State. Under these circumstances, a finding that this transaction is limited in scope clearly is warranted. Finance Docket No. 32813, H. Peter Claussen and Linda C. Claussen – Continuance In Control Exemption – Live Oak, Perry & Georgia Railroad Company, Inc. (STB served March 29, 1996); see also Finance Docket No. 32657, Iron Road Railways Incorporated – Control Exemption – Bangor and Aroostook Railroad Company (STB served September 12, 1996).

C. Regulation of the Transaction  
is Not Needed to Protect Shippers  
From Abuse of Railroad Market Power

Inasmuch as the Applicants' continuance in control over SBS is limited in scope, it is not even necessary to consider whether closer scrutiny of the transaction is needed to protect shippers from abuse of railroad market power. 49 U.S.C. § 10502(a)(2)(A). Nevertheless, the relevant facts show that this alternative criterion is met as well.

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<sup>6</sup> SBS annual traffic level is expected to be on the order of 35,000 carloads, including overhead traffic.

Through this transaction, a new Class III carrier which operates in a limited geographic area simply is being commonly controlled with another Class III carrier that already is controlled by Applicants. There will be no change in existing operations over the lines to be acquired by SBS, and no shipper will lose rail service options as a result of the transaction. In prior decisions, the Board has recognized these elements as indicative of the absence of any threat of market power abuse. See Finance Docket No. 33607, David W. Wulfson – Control Exemption – Clarendon & Pittsford Railroad Company (STB served August 20, 1998); Finance Docket No. 33846, Peter A. Gilbertson and Southshore Corporation – Control Exemption – Illinois Indiana Development Company, LLC (STB served April 26, 2000).

D. Labor Protection

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because the carriers involved are Class III carriers. See 49 U.S.C. § 11326(c); Finance Docket No. 34683, Watco Companies – Continuance in Control Exemption – Mississippi Southern Railroad, Inc. (STB served April 21, 2005), at 2 (finding that § 11326(c) precluded the imposition of labor protection conditions in a transaction involving the continuance in control of a Class III carrier

which was to lease its rail line from The Kansas City Southern Railway Company); Finance Docket No. 34026, Summit View, Inc. – Control Exemption – Mahoning Valley Railroad Company (STB served May 17, 2001), at 3.

E. Environmental and Historic Impact

The Board's regulations governing general petitions for exemption under 49 U.S.C. § 10502 call for compliance with environmental or historic impact and notice requirements under 49 C.F.R. Part 1105, "if applicable." See 49 C.F.R. § 1121.3(b).

Under 49 C.F.R. § 1105.6(c)(2)(i), no environmental documentation need be prepared for a control transaction (such as the instant) that will not result in: (1) a traffic diversion from rail to motor carriage of more than 1000 carloads per year or 50 carloads per mile; (2) a 100% increase in rail traffic or rail yard activity; (3) increases of more than 10% or 50 vehicles per day in truck traffic; or (4) prescribed level increases in rail or truck traffic in class I or non-attainment areas under the Clean Air Act. See 49 C.F.R. §§ 1105.7(e)(4) and (5). Applicants' continuance of control over SBS will not lead to any changes in rail operations, and is not expected to result in appreciable changes in traffic volumes. As such, the threshold criteria for environmental documentation summarized above will not be met, and no such documentation is required.

Similarly, 49 C.F.R. § 1105.8(b)(3) provides that a control transaction that will not substantially change the level of maintenance of railroad property is exempt from regulations requiring the preparation of an historic report. The transaction in question

contemplates no changes in SBS's maintenance or operating profile. Therefore, the historic reporting rules are not applicable in this case.

### CONCLUSION

For the reasons set forth herein and based upon the facts as verified by Mr. James George, Applicants requests that their Petition be considered expeditiously and granted, and that pursuant to 49 U.S.C. § 10502, the Board exempt Applicants' continuance of control of SBS from the prior approval requirements of 49 U.S.C. § 11323, et seq.

JAMES GEORGE, J&JG HOLDING  
COMPANY  
P.O. Box 232  
323 Newman Street  
East Tawas, MI 48730

OF COUNSEL:

SLOVER & LOFTUS  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036

Dated: September 1, 2005

By: Kelvin J. Dowd  
Andrew B. Kolesar III   
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036  
(202) 347-7170

Attorneys for Applicants

VERIFICATION

STATE OF MICHIGAN

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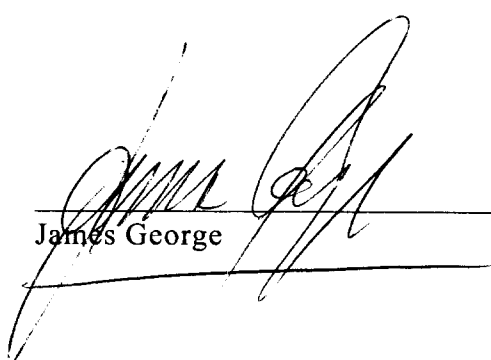
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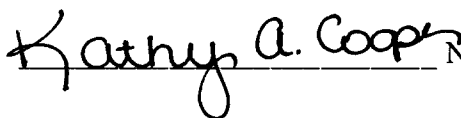
COUNTY OF IOSCO

)

James George, being duly sworn, deposes and says that he is President of J&JG Holding Company, that he has read the foregoing Petition and knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

  
James George

Sworn and subscribed before me  
this 15th day of August, 2005

 Notary Public

**KATHY A. COOPER**  
Notary Public, Iosco County, MI  
My Commission Expires Feb. 24, 2008

My Commission expires: \_\_\_\_\_

**Exhibit No. 1**

