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January 6, 2006

By Messenger

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

RE: Finance Docket Nos 34421 and 34421 (Sub-No. 1), *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 Secretary Williams:

Please find enclosed the original and ten (10) copies of Holrail LLC Reply to CSX Motion for Extension of Time to be filed in the above referenced proceeding. Also enclosed is a diskette with a copy of the Reply in Word and PDF format.

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 me.

Sincerely,

Jeffrey O. Moreno

Enclosures

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NOS. 34421 AND 34421 (Sub-No. 1)

**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**

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

HOLRAIL LLC REPLY TO CSX MOTION FOR EXTENSION OF TIME

On January 5, 2006, CSX Transportation, Inc. ("CSX") submitted a letter to the Board requesting a six week extension of time, from January 13 until February 24, 2006, for CSX to Reply to the "HolRail LLC Petition for Crossing Authority and Supplemental Evidence in Support of Petition for Exemption." HolRail hereby replies in partial opposition to CSX's request.

CSX counsel contacted HolRail counsel on the afternoon of January 5, 2006 to request HolRail's consent to this extension. CSX represented that it needed this additional time because laptop computers containing data relevant to CSX's reply had been stolen from counsel's office. Since HolRail counsel was unable to immediately contact their client to present CSX's request, CSX elected to file its motion promptly due to the short time remaining before the January 13th due date for its Reply.

CSX's motion, however, is not predicated primarily on the stolen laptop computers, as CSX counsel represented to HolRail, but upon CSX's purported need for additional time to prepare its Reply. The theft is merely a secondary argument mentioned in the last paragraph of

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CSX's motion to bolster its request. An extension of time on the basis of CSX's principle argument is unwarranted.

This is the second extension of time sought by CSX to submit its Reply. Under the Board's procedural rules, CSX's reply originally was due on September 29, 2005, which was 20 days after HolRail submitted its Crossing Petition and Supplemental Evidence. CSX, however, simply declined to file a Reply on that date. Although CSX claimed it needed more than the 20 days provided by the STB's rules, it neither asked HolRail for an extension of time nor filed a motion with the Board. Only after the Board contacted CSX's counsel did CSX agree to negotiate the current procedural schedule with HolRail. Although HolRail preferred only a 60 day extension of time, it reluctantly agreed to an extension, until January 13, 2006, in order to avoid the uncertainty and delay that a procedural schedule dispute would cause. Now CSXT has requested an additional six weeks.

CSX should not be allowed to claim now that the four month reply period that it negotiated with HolRail is insufficient. CSX negotiated that procedural schedule over three weeks after receiving HolRail's Crossing Petition and Supplemental Evidence, which should have provided ample time for CSX to assess the effort required to submit its Reply. Furthermore, CSX should have known whether it would need six weeks of additional time well before filing its motion for extension only one week before the due date. CSX's claim that its "analysis has been affected by the recently completed holiday season" also deserves no consideration, since CSX also would have been fully aware of the holiday season when it negotiated the January 13th due date. Indeed, the holiday season was a factor explicitly discussed by counsel for CSX and HolRail when negotiating the current procedural schedule. Lastly, the Board routinely provides 60-90 days to submit replies in stand-alone rate cases, which

are among the most complex cases considered by the Board. For all of these reasons, CSX's claim that four months is insufficient time to address the complexities of this case simply is not credible.

CSX's reliance upon *New England Transrail, LLC d/b/a Wilmington & Woburn Terminal Ry.—Construction, Acquisition and Operation Exemption—in Wilmington and Woburn, MA*, STB Finance Docket No. 34797 (served Dec. 20, 2005) also is misplaced. In that decision, the Board merely granted a 30 day extension to the 20 day reply period permitted by the Board's rules. The original reply date would have fallen immediately after the Christmas Holiday. In this case, CSX seeks a six week extension on top of a prior extension, to which CSX itself had agreed, that granted CSX a four month reply period.

CSX incorrectly claims that its requested extension will not prejudice HolRail because the environmental review will not be completed until after the proposed extension. This statement, even if true, does not mean that HolRail will not be prejudiced. Since the Board cannot fully consider HolRail's Petition until CSX has submitted its Reply, any delay in CSX's Reply translates into a delay in the Board's consideration of the evidence. CSX cannot know how long the Board will need to evaluate the evidence or whether that will be more or less time than is needed to complete the environmental review.

Furthermore, HolRail will be prejudiced merely by the fact that it agreed to a procedural schedule that CSX now seeks to unilaterally abrogate. If CSX had proposed a February 24, 2006 due date initially, HolRail never would have agreed to that procedural schedule. Indeed, Holrail only agreed to the January 13, 2006 date because it believed that, by the time the Board ruled on dueling motions, January would be the earliest practical reply date. If CSX had demanded a greater amount of time, HolRail would have turned to the Board to request its preference for only

a 60 day extension of time. The Board should not now sanction CSX's attempt to unilaterally abrogate its own agreement to a procedural schedule through a "bait and switch" tactic.

HolRail nevertheless is willing to accommodate CSX with a one week extension due to the stolen laptop computers. Under the circumstances, a six week extension would be excessive. While the loss of data on the laptops is unfortunate, most of the information prepared for CSX's Reply should reside on a central computer server and/or should exist on back up tapes. CSX's motion does not suggest otherwise. Therefore, CSX should not require six weeks to reconstruct the lost data and submit its Reply. Even if this is not the case, it hardly seems equitable to penalize HolRail for CSX's failure to take standard precautions to back-up data in today's computer age.

For the above-stated reasons, HolRail believes that a one week extension, until January 20, 2006, is a fair accommodation to CSX under the circumstances. Therefore, although HolRail does not object to an extension, it requests that the Board grant an extension of only one week.

Respectfully submitted,



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Attorney for HolRail LLC

January 6, 2006

CERTIFICATE OF SERVICE

I hereby certify that this 6th day of January, 2006, I served a copy of the foregoing "Reply to CSX Motion for Extension of Time" by hand delivery upon counsel for CSX Transportation, Inc., at the following address:

Louis E. Gitomer, Esq.
BALL JANIK LLP
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Washington, D.C. 20005


Aimee L. DePew