

215999

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March 15, 2006

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

Re: **Finance Docket No. 34729**
Saginaw Bay Southern Railway Company -- Acquisition and
Operation Exemption -- Rail Line of CSX Transportation, Inc.

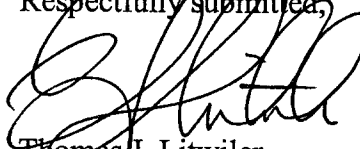
Dear Secretary Williams:

Huron & Eastern Railway Company, Inc. today filed electronically a Petition for Show Cause Order in the above-captioned proceeding. Mrs. Hardy in the Board's Office of Proceedings has advised that a filing fee of \$200 is required for this pleading. A check in that amount is enclosed.

Ten copies of this letter are enclosed for filing at the Board. One extra copy also is enclosed, and I would request that you date-stamp that copy to show receipt of this filing and return it to me in the provided envelope.

I regret the initial omission of the filing fee, and appreciate Mrs. Hardy's assistance in this matter. Kind regards.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Huron & Eastern
Railway Company, Inc.

TJL:tl

Enclosures

215999

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March 15, 2006

VIA ELECTRONIC FILING

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

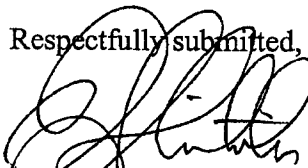
Re: **Finance Docket No. 34729**
Saginaw Bay Southern Railway Company -- Acquisition and
Operation Exemption -- Rail Line of CSX Transportation, Inc.

Dear Secretary Williams:

Attached for filing in the above-captioned proceeding is an electronic version of the **Petition for Show Cause Order of Huron & Eastern Railway Company, Inc.**, dated March 15, 2006.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Huron & Eastern
Railway Company, Inc.

TJL:tl

Attachment

cc: Andrew B. Kolesar III, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34729

SAGINAW BAY SOUTHERN RAILWAY COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
RAIL LINE OF CSX TRANSPORTATION, INC.

**PETITION FOR SHOW CAUSE ORDER OF
HURON & EASTERN RAILWAY COMPANY, INC.**

Gary A. Laakso
Vice President - Regulatory Counsel
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(561) 994-6015

Ronald A. Lane
Thomas J. Litwiler
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Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR HURON & EASTERN
RAILWAY COMPANY, INC.**

Dated: March 15, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34729

SAGINAW BAY SOUTHERN RAILWAY COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
RAIL LINE OF CSX TRANSPORTATION, INC.

**PETITION FOR SHOW CAUSE ORDER OF
HURON & EASTERN RAILWAY COMPANY, INC.**

Huron & Eastern Railway Company, Inc. ("HESR") hereby requests that the Board enter an order directing Saginaw Bay Southern Railway Company ("SBS") to show cause why it should not be required either to seek appropriate regulatory authority for its operations over a line owned by HESR or to cease such operations. In a transaction consummated late last year, SBS acquired 67 miles of rail line in the vicinity of Saginaw, Michigan from CSX Transportation, Inc. ("CSXT"), including two CSXT line segments connected by trackage rights over a line owned by HESR. SBS did not seek or obtain authority to acquire or operate those trackage rights, and since that time has not accepted CSXT's existing responsibility for maintaining the line, despite the fact that SBS is the only carrier conducting rail operations on the line. HESR intends to seek appropriate conditions on any STB regulatory approval of SBS's acquisition of those trackage rights, once SBS actually seeks such approval.

Historical Circumstances

Prior to October 28, 2005, CSXT and its predecessors operated pursuant to trackage rights over a 6.4-mile rail line between Mershon (Saginaw) and Paines, Michigan now owned by HESR. The trackage rights were first granted in an Agreement dated April 2, 1878 between the Jackson, Lansing & Saginaw Railroad Company (as landlord and predecessor of

HESR)¹ and the Saginaw Valley & St. Louis Railroad Company (as trackage rights tenant and predecessor of CSXT).² GTW, as the successor landlord, was authorized to abandon the 3.0-mile portion of the line between Superior Street and Paines (the "Paines Segment") in 1985, subject to C&O's trackage rights as the successor tenant. Grand Trunk Western Railroad Company -- Abandonment -- In Saginaw County, MI, Docket No. AB-31 (Sub-No. 21X) (ICC served March 29, 1985 and April 23, 1985). GTW terminated the 1878 Agreement in 1986, and C&O agreed to maintain the Paines Segment and indemnify the owner in an "assurance" dated June 5, 1986 (copy attached as Exhibit A). Since at least 1983, to the best of HESR's knowledge, neither GTW nor its successors (including HESR) have operated over the Paines Segment, while C&O and its successors have exclusively operated on and over the line, maintained the line, and indemnified the owner of the tracks and right-of-way.

2005 Lease and Purchase

On September 1, 2005 SBS filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.31, et seq. to acquire certain track in Michigan and lease the underlying right-of-way from CSXT. Saginaw Bay Southern Railway Company -- Acquisition and Operation

¹ The Jackson, Lansing & Saginaw Railroad Company was a predecessor of Michigan Central Railroad Company and later Penn Central Transportation Company. As part of the Final System Plan that resulted in the creation of Consolidated Rail Corporation, the Mershon-Paines line was acquired on April 1, 1976 by Grand Trunk Western Railroad Company ("GTW"). In 1987 GTW's rail lines in the area were acquired by Central Michigan Railway Company ("CMGN"). See Central Michigan Railway Company -- Acquisition and Operation Exemption -- Certain Lines of Grand Trunk Western Railroad Company, Finance Docket No. 31059 (ICC served July 13, 1987, September 4, 1987 and December 10, 1987). In January, 2004, HESR acquired the rail lines of CMGN. Huron & Eastern Railway Company, Inc. -- Acquisition and Operation Exemption -- Central Michigan Railway Company, Finance Docket No. 34438 (STB served February 4, 2004).

² The Saginaw Valley & St. Louis Railroad Company was the predecessor in interest to, respectively, Pere Marquette Railway Company, The Chesapeake & Ohio Railway Company ("C&O") and CSXT.

Exemption -- Rail Line of CSX Transportation, Inc., Finance Docket No. 34729 (STB served September 27, 2005) ("SBS Acquisition"). The lines so identified included CSXT trackage in Saginaw and a short piece of CSXT trackage extending west from Paines, but did not include CSXT's trackage rights over the intermediate segment from Mershon to Paines owned by HESR or even reference that segment.³ Subsequent to October 28, 2005, SBS has operated on and over this line, despite its apparent lack of authority to do so. Currently SBS handles some 5000 loaded cars per year over the line. As indicated above, HESR conducts no rail operations on the Paines Segment, and neither it or its predecessors have done so for at least 20 years.

Maintenance and Indemnity Dispute

HESR has raised with both CSXT and SBS the matter of operating rights between Mershon and Paines, and specifically the responsibility for maintenance and liability for operations on the Paines Segment. CSXT has indicated that it has no such responsibility, having assigned its rights to SBS. SBS was notified by HESR letter dated February 23, 2006 (copy, minus enclosures, attached as Exhibit C) of CSXT's position and the purported assignment. SBS has not acknowledged or accepted responsibility for maintenance and liability on the Paines Segment, nor sought proper regulatory authority for its trackage rights operations on the Paines

³ In 1999, CSXT sought to abandon its rail line extending between milepost CBE-7.80 and milepost CBE-10.09 in Paines, and specifically noted that "[t]his line is an island operation of CSXT and is located between [CMGN] to the east, and Mid-Michigan Railroad, Inc. to the west. In order to access this line, CSXT must operate over CMGN's trackage between Saginaw and Paines." CSX Transportation, Inc. -- Abandonment Exemption -- In Saginaw County, Michigan, Docket No. AB-55 (Sub-No. 571X), CSXT Petition for Exemption filed March 1, 1999 at 2 (excerpt attached as Exhibit B). CSXT never consummated the abandonment, and the line was included in the recent sale to SBS. SBS Acquisition at 1 (SBS will acquire "(7) from milepost CBE 7.72 to milepost CBE 10.09 both at the Paines Station."). While SBS plainly has to operate over HESR's Mershon-Paines trackage to reach this line, no such trackage rights were included in its notice of exemption. Also omitted from SBS's notice of exemption were separate trackage rights that CSXT held on HESR's line north of Mershon. See CSX Transportation, Inc. -- Trackage Rights -- Grand Trunk Western Railroad Company, Finance Docket No. 31114 (ICC served September 29, 1987).

Segment and other HESR-owned lines. SBS, however, continues to operate its trains over the Paines Segment.

HESR's Predicament

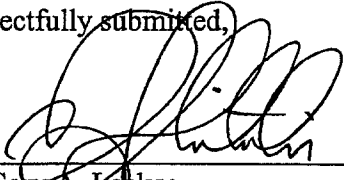
HESR and its immediate predecessors have not handled any traffic on the Paines Segment for many years. GTW sought and obtained authority to abandon the line two decades ago. However, that "abandonment" was subject to the trackage rights of C&O. In effect, the ICC's "abandonment" authority was tantamount to authority for GTW to discontinue its common carrier obligations on the line pending final arrangements regarding C&O's trackage rights, and it was treated as such by the parties at the time. C&O subsequently undertook the maintenance and liability obligations for the line, if not its ownership.⁴ Today HESR has no reason or desire to operate over this trackage, but it cannot effectively divest itself of the line because of its use by the trackage rights tenant.

It would be contrary to the National Transportation Policy to expose HESR to the obligation to maintain the track on the Paines Segment or assume liability for incidents arising in connection with SBS's exclusive operations thereon, particularly when CSXT had done so for twenty years prior to a purported trackage rights assignment subject to the Board's jurisdiction but not submitted to or authorized by the agency. HESR intends to seek conditions on any SBS trackage rights authorization that would require SBS to assume CSXT's maintenance and other operating obligations on the Paines Segment and liability arising from any use of or operation over that line. Neither the Board nor HESR can effectively address those matters, however, until and unless SBS seeks such trackage rights authorization.

⁴ In fact, GTW had attempted to sell the Paines Segment to C&O, the only potential buyer, and C&O refused to purchase.

WHEREFORE, HESR respectfully requests that the Board enter a show cause order requiring SBS either to seek appropriate regulatory authority for its trackage rights operations over the Mershon-Paines line or to cease such unauthorized operations.

Respectfully submitted,

By: 

Gary A. Laakso

Vice President - Regulatory Counsel
RailAmerica Inc.
5300 Broken Sound Boulevard
Boca Raton, Florida 33487
(561) 994-6015

Ronald A. Lane
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR HURON & EASTERN
RAILWAY COMPANY, INC.**

Dated: March 15, 2006

Ronald W. Cracker
Vice President
Personnel



100 North Charles Street
Baltimore, Maryland 21201

June 5, 1986
File: MI 38
LE 1-GTW-5

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. J. L. McMutt
General Manager-Transportation
Grand Trunk Western Railroad Company
131 West Lafayette Boulevard
Detroit, Michigan 48226

Re: Paines to Marston

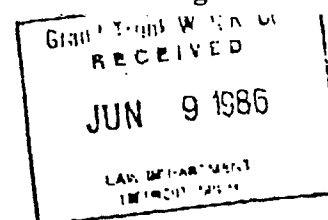
Dear Mr. McMutt:

As you know, prior to June 1, 1986, CSO operated over a portion of GTW's line in Saginaw, MI, between Paines and Marston, pursuant to an agreement dated April 2, 1878, between predecessors of CSO and GTW. GTW has notified CSO that as to the portion of GTW's line between Superior Street (PC MP 98.6) and Paines (PC MP 95.6) (hereinafter called the "Segment"), GTW terminated the 1878 Agreement on May 16, 1986. GTW has also notified CSO that after May 31, 1986, GTW will no longer inspect, maintain or operate the Segment. CSO has notified GTW of CSO's nonacceptance of such termination and has also notified GTW that CSO shall consider GTW's refusal to inspect, maintain and operate the Segment for CSO's use pursuant to the 1878 Agreement as a breach of that Agreement.

Your telex to me of June 4, 1986, threatened to deny CSO access to the Segment unless CSO concurred in your proposed liability language. This is to advise you that CSO extends the following assurance to GTW:

In consideration of GTW permitting CSO to inspect, maintain and operate the Segment, CSO hereby undertakes and agrees to indemnify and save GTW harmless of and from all claims, demands and rights of action of every name, nature and description, whether arising under state or federal statutes, or at common law, for injury to alleged injury to persons whether employees of GTW, or to CSO, or to employees of CSO, or to third parties, and damage or alleged damage to property regardless of to whom it may belong or in whose custody it may be, arising through, on account of or out of CSO's inspection, maintenance and operation of the Segment, no matter how caused, whether caused by the negligence of GTW, its agents, employees, or otherwise. CSO undertakes and agrees that in case claim is made or suit instituted against GTW for such loss, injury or damage, CSO will, upon notice from GTW, settle, adjust or defend the same at its sole cost

J. L. McNutt
June 5, 1986
Page 2



and expense and without expense to GTW and will pay any judgment rendered therein together with court costs. The foregoing assumption of liability shall not apply to any labor protective claims arising under the Railway Labor or Interstate Commerce Act.

This assurance is provided solely to permit continued C&O access to the Segment after May 31, 1986. Accordingly, this assurance does not constitute a waiver of any claims C&O or GTW may have in connection with the Agreement of April 2, 1978, including, without limitation, past or future C&O operations over the Segment, and nothing contained herein shall be construed to limit, restrict, waive, or prejudice any rights, remedies, or defenses that C&O or GTW may have with respect to such Agreement and C&O's past or future operations over the Segment under the Agreement, this license, or otherwise.

Yours truly,

cc: Mr. J. C. Danielson
Mr. L. H. Richmond
Mr. W. B. Vander Veer

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0615-27008
FILED

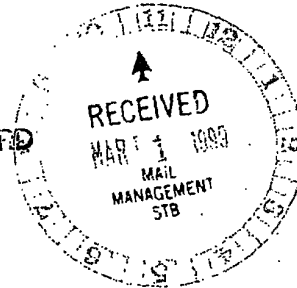
MAR 01 1999
BEFORE THE

ENTERED
Office of the Secretary

SURFACE TRANSPORTATION BOARD

MAR 01 1999

Part of
Public Record



ENTERED
Office of the Secretary

DOCKET NO. AB-55 (SUB-NO. 571X)

MAR 01 1999

Part of
Public Record

CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION
IN SAGINAW COUNTY, MICHIGAN

FEE RECEIVED

MAR 01 1999

FILED

MAR 01 1999

PETITION FOR EXEMPTION

**SURFACE
TRANSPORTATION BOARD**

TRANSPORTATION BOARD

CHARLES M. ROSENBERGER
500 Water Street
Jacksonville, Florida 32202
(904) 359-1250

Counsel for
CSX TRANSPORTATION, INC.

Dated: February 26, 1999

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (SUB-NO. 571X)

CSX TRANSPORTATION, INC.
ABANDONMENT EXEMPTION
IN SAGINAW COUNTY, MICHIGAN

P E T I T I O N F O R E X E M P T I O N

CSX Transportation, Inc. ("CSXT") proposes to abandon that portion of its Detroit Service Lane, Dean Subdivision, extending between Milepost CBE-7.80 and Milepost CBE-10.09, a total distance of approximately 2.29 miles, in Paines, Saginaw County, Michigan (hereinafter referred to as "the line"). The line traverses through United States Postal Service ZIP Code 48609. Maps showing the trackage proposed for abandonment as well as the location of the trackage in the State of Michigan, are attached to this petition as Exhibit A. CSXT files this petition under 49 U.S.C. 10502 for an exemption from the provisions of 49 U.S.C. 10903, with regard to the proposed abandonment. In support of its petition, CSXT states the following:

- 2 -

1. CSXT presently operates as part of its Detroit Service Lane, Dean Subdivision, a 2.29 mile branch main line at Paines, Michigan. This line is an island operation of CSXT and is located between the Central Michigan Railway Company ("CMGN") to the east, and Mid-Michigan Railroad, Inc. ("MMRR") to the west. In order to access this line, CSXT must operate over CMGN's trackage between Saginaw and Paines. CSXT proposes to abandon the entire 2.29 mile line segment and then sell the line to MMRR under the Board's Offer of Financial Assistance ("OFA") procedures for continued rail use. Specifically, the line proposed for abandonment and sale extends between Milepost CBE-7.80 and Milepost CBE-10.09 in Paines, Michigan. The entire line proposed for abandonment and sale is located in Saginaw County, Michigan.

There are no rail patrons located on the line proposed for abandonment. The line is used today exclusively for the interchange of traffic between CSXT and MMRR. Following the receipt of authority from this Board to abandon the line, MMRR will file an OFA to acquire the line, and the line will subsequently be transferred to MMRR for continued rail use. Following the transfer of this line to MMRR, interchange between CSXT and MMRR will take place at CSXT's Saginaw Yard which is approximately 8 miles from Paines. Accordingly, this proposed abandonment and sale will have no effect on any rail user. If for some reason MMRR does not

RailAmerica Operations Support Group, Inc.

® A RailAmerica Company

Corporate Headquarters
5300 Broken Sound Blvd., NW
Boca Raton, Florida 33487
Tel: 561.226.1722
Fax: 561.994.0396

February 23, 2006

Mr. James George
Saginaw Bay Southern Railway
323 Newman Street
PO Box 2323
East Tawas, MI 48730

Re: Assignment of 1878 Paines-Mershon Joint Use Assignment and subsequent Agreements

Dear Mr. George,

On February 13, 2006, Virginia Beck, Manager Joint Facilities, CSX Transportation provided HESR with a letter confirming CSX's assignment of the April 2, 1878 Agreement concerning SBS trackage rights over HESR. The 1878 Agreement covering Trackage Rights from Mershon – Paines was amended by a subsequent letter dated June 5, 1986 (enclosed) from CSX to GTW(HESR), which stated and assured GTW(HESR) that CSX(SBS) would inspect, maintain and hold GTW(HESR) harmless for continued operation of the Mershon – Paines segment of trackage between Superior Street (PC MP 98.6) and Paines (PC MP 85.6).

It is the intention of HESR to file with the STB, the oversight by SBS to include those trackage rights in its description of operations in its initial STB filing.

Please feel free to call with any questions or comments.

Regards,

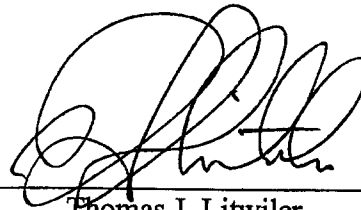
Sandy Franger
VP-Contracts & Inter-carrier Agreements
561-226-1722

Cc: Jan Polley – Jack Bixby (HESR) (via email only) no/encl
Tom Lanni – Gary Laakso – RailAmerica (via email only) no/encl
Encl. 1878 Agreement – June 5, 1986 Letter

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2006, a copy of the foregoing
Petition for Show Cause Order of Huron & Eastern Railway Company, Inc. was served by
overnight delivery upon:

Kelvin J. Dowd, Esq.
Andrew B. Kolesar III, Esq.
Slover & Loftus
1224 17th Street, N.W.
Washington, DC 20036

A handwritten signature in black ink, appearing to read 'T. Litwiler', is written over a horizontal line.

Thomas J. Litwiler