

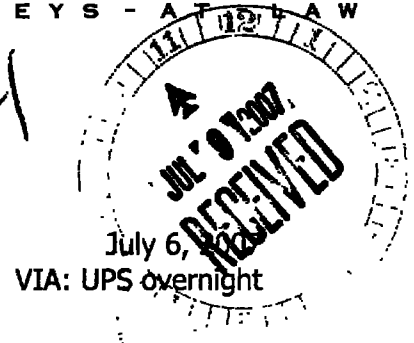
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FILED  
SURFACE  
TRANSPORTATION BOARD

219 721



Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20024

**FEE RECEIVED**

TRANSPORTATION BOARD

RE: STB Finance Docket No. 35062  
Finger Lakes Railway Corp. -  
Control Exemption -  
Ontario Central Railroad Corp.  
**Petition for Exemption (Expedited Consideration)**

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of the Petition for Exemption of Finger Lakes Railway Corp., together with a check in the amount of \$5,700 representing the filing fee. Also enclosed are 20 additional copies of the map attached as Exhibit A.

Please time-stamp the extra copy of this letter and the Petition to indicate receipt, and return them to me in the stamped, self-addressed envelope provided for your convenience.

Respectfully submitted,

Eric M. Hocky  
Attorney for  
Finger Lakes Railway Corp.

Enclosures

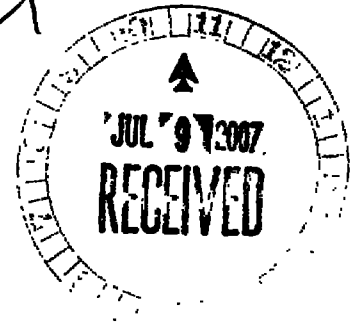
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SURFACE  
TRANSPORTATION BOARD

Before the  
**SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35062

**FINGER LAKES RAILWAY CORP.**

**- CONTROL EXEMPTION -**

**ONTARIO CENTRAL RAILROAD CORP.**

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TRANSPORTATION BOARD

**PETITION FOR EXEMPTION**

**Expedited Consideration Requested**

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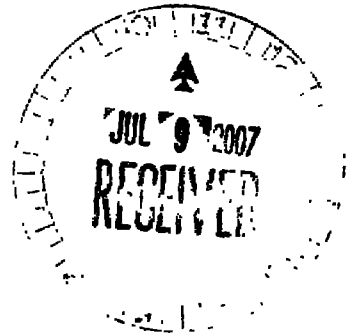
Dated: July 6, 2007

Before the  
**SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35062

**FINGER LAKES RAILWAY CORP.  
– CONTROL EXEMPTION –  
ONTARIO CENTRAL RAILROAD CORP.**

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**PETITION FOR EXEMPTION**

Finger Lakes Railway Corp. ("FGLK"), a Class III carrier, petitions for an exemption under 49 U.S.C. §10502 and 49 C.F.R. §1121 from the provisions of 49 U.S.C. §§11323-11324 to enable FGLK to acquire control of a connecting Class III carrier, Ontario Central Railroad Corp. ("ONCT"). ONCT operates a 14 mile line of railroad under lease from Ontario County, New York. On June 29, 2007, FGLK purchased from Livonia, Avon & Lakeville Railroad Corp. ("LAL"), 81.05% of the issued and outstanding stock of ONCT. Because FGLK cannot control ONCT without the prior approval of the Board, the stock was immediately transferred to William P. Quinn, as voting trustee under a Voting Trust Agreement, in accordance with the Board's regulations at 49 CFR Part 1013. FGLK is now filing this Petition for Exemption for authority to control ONCT, and to dissolve the Voting Trust. In support of its request for exemption, FGLK represents as follows:

## THE PROPOSED TRANSACTION

FGLK and ONCT are both Class III common carriers by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105. FGLK currently owns or operates approximately 154 miles of rail lines in New York. ONCT currently leases and operates approximately 14 miles of rail line in New York. FGLK and ONCT connect at Shortsville, New York. ONCT also connects with both CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR"). A map showing the rail lines of FGLK and ONCT is attached as Exhibit A. ONCT was previously controlled by LAL. *See Livonia, Avon & Lakeville Railroad Corporation – Acquisition of Control Exemption – Ontario Central Railroad Corporation*, STB Finance Docket No. 33674 (served November 10, 1998). FGLK proposes to acquire control of ONCT and operate it as an independent part of the FGLK family. FGLK does not anticipate making any material changes in the scope or nature of ONCT's operations, or of ONCT's maintenance of its line. There will be no reduction in service options – ONCT shippers will still have access to both CSXT and NSR; further, because FGLK operates over connecting lines, shippers on ONCT may have some additional routings available.

Because of month end insurance and accounting issues, FGLK closed on the purchase of LAL's controlling stock interest in ONCT on June 29, 2007. However, the stock was immediately transferred to William P. Quinn as the Voting Trustee under a Voting Trust Agreement dated June 29, 2007.

This transaction does not involve a Class I carrier. If not for the fact that the line of ONCT connects with the lines of FGLK, this transaction would be an exempt transaction under

49 C.F.R. §1180.2(d). Since the transaction is not eligible for the class exemption notice procedures, FGLK is filing this Petition for Exemption.

**Additional Information.**<sup>1</sup> FGLK provides the following additional information about the transaction to enable the Board to process this Petition:

*1180.6(a)(1)*

(i) The proposed transaction, as more fully described above, involves the acquisition by FGLK of control of ONCT through the purchase of 81.05% of the issued and outstanding stock of ONCT. Pending approval by the Board, the stock is being held in a Voting Trust.

The full name and address of the petitioner is Finger Lakes Railway Corp., 68 Border City Road, Geneva, NY 14456. It is currently a Class III carrier.

The name, address and telephone number of counsel to whom questions regarding the transaction can be addressed is Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103-2808; 215-563-9400.

(ii) As noted below, Petitioner would like to consummate the transaction on an expedited basis as soon as the exemption is granted in order to permit the transition to FGLK control to take place as soon as possible.

---

<sup>1</sup> Although this transaction does not qualify for one of the Board's class exemptions under 49 C.F.R. §1180.2(d), FGLK is providing the information that the Board requires for such exemptions as set forth in 49 C.F.R. §1180.4(g).

(iii) The purpose of the transaction is to give FGLK control of a small connecting railroad, ONCT, to enable the carriers to take advantage of the cost savings and efficiencies of operations over connecting lines.

*1180.6(a)(5)*

FGLK and ONCT both operate in the State of New York.

*1180.6(a)(6)*

A map showing the lines of both FGLK and ONCT is attached hereto as Exhibit A.

*1180.6(a)(7)(ii)*

FGLK's control of ONCT will flow from its ownership of over 80% of the issued and outstanding shares of ONCT. There are no documents that will govern the control of ONCT by FGLK (other than the governing corporate documents).

*Employee protection.*

The appropriate level of employee protection is discussed more fully below.

## **CONTROL OF ONCT SHOULD BE EXEMPTED**

Control of one carrier by another carrier is subject to the prior approval and authorization of the Board under 49 U.S.C. §11323(a)(3). Thus, unless the exemption requested herein is granted, the proposed acquisition of stock in ONCT by FGLK would require that FGLK file an application under 49 C.F.R. §1180. Since the transaction does not involve the merger of two Class I railroads, however, the Board would be required to approve the application *unless* it were to find *both*:

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. §11324(d).

The Board is directed by 49 U.S.C. §10502 to grant an exemption from regulation if it finds that (1) regulation is not necessary to carry out the rail transportation policy ("RTP") of 49 U.S.C. §10101, and (2) either the transaction is limited in scope or regulation is not needed to protect shippers from the abuse of market power. The Interstate Commerce Commission held:

In determining whether regulation of a transaction proposed for exemption under § 10505 [now 10502] is necessary to carry out the RTP, our analysis generally focuses on the criteria relating to the underlying statute from which exemption is sought. We need not extend our analysis beyond what we would address in an application proceeding itself. See Finance Docket No. 31493, Blackstone Cap. Partners -- Cont. Exempt. -- CNW Corp., Et Al. (not printed), served July 5, 1989, at 2. Section 10505 provides a shortcut analysis to see if regulation -- in this case under § 11344(d)[now 11324(d)] -- is necessary. If § 11344(d) does not require review of particular issues, neither does the § 10505 process.

*Indiana R. Co. – Acq. & Oper. – Illinois Central R. Co.*, 6 ICC 2d 1004, 1006 (1990),  
*aff’d sub nom. Village of Palestine v. ICC*, 936 F. 2d 1335 (D.C. Cir 1991).

As noted above the inquiry under Section 11324(d) focuses on the lessening of competition and anticompetitive effects. Here, no such effects will be likely. ONCT has been managed by another Class III carrier since 1998, and FGLK will merely substitute its control for that of LAL. As a connecting carrier, FGLK will be able to provide not only administrative support, but also will be able to provide equipment and even employees to supplement ONCT’s operations. ONCT will continue as an independent carrier, providing the same service to shippers and providing the same maintenance of its line (as required by its lease with the County). Shippers on ONCT will still have access to both CSXT and NSR, as well as FGLK. There will be no reduction of competition or any anticompetitive effects from the transaction.

Further, grant of the requested exemption would also be fully consistent with the standards of 49 U.S.C. §10502. Detailed scrutiny of a full application is not required to carry out the transportation policy of 49 U.S.C. §10101; the transaction is clearly limited in scope, and will not result in any abuse of market power. The grant of an exemption to FGLK will minimize the need for Federal regulatory control (49 U.S.C. §10101(2)), foster sound economic conditions in transportation (49 U.S.C. §10101(5)), reduce regulatory barriers to entry into and exit from the rail industry (49 U.S.C. §10101(7)), encourage efficient management of railroads (49 U.S.C. §10101(9)), and provide for expeditious handling and resolution of all proceeding (49 U.S.C. §10101(15)). Moreover, the grant of the exemption will not adversely affect any of the other 15 items which have been made a part of rail transportation policy by 49 U.S.C. §10101.

Additionally, the transaction is clearly limited in scope. Both ONCT and FGLK are Class III carriers operating in a small region of New York. ONCT operates a line that is only 14 miles long, and it currently handles only 200± carloads per year. Although the exemption analysis does not require further inquiry, it is also clear in this proceeding that the transaction will not result in any abuse of market power. As noted above, no competitive harm will result and there is no threat of abuse of shippers. By allowing FGLK to assume control of ONCT, it will be able to better coordinate service on ONCT and the interchange between ONCT and FGLK. FGLK may also be in a better position with its local marketing contacts to develop additional local business on ONCT. The Board has granted exemptions for common control in similar circumstances involving connecting carriers. *See Genesee & Wyoming, Inc. – Control Exemption – South Buffalo Railway Company*, STB Finance Docket No. 34107 (served November 21, 2001).

### **EMPLOYEE PROTECTION**

Since this transaction involves only Class III carriers, no employee protective arrangements may be imposed. 49 U.S.C. §11326(c).

### **ENVIRONMENTAL AND HISTORIC REPORTS**

ONCT will continue to operate its line and serve its customers on the same basis that it is currently doing. As such, the proposed transaction should be exempt from the Board's environmental reporting requirements pursuant to 49 C.F.R. §1105.6(c)(2)(i) and (ii). Further, the proposed transaction is exempt from the historic preservation reporting requirements since

the proposed control through stock ownership will not substantially change the level of operations over, or maintenance of, ONCT's line. *See* 49 C.F.R. §1105.8(b)(3).

### **VOTING TRUST**

As noted above, FGLK entered into a Voting Trust Agreement with William P. Quinn that complies with the Board's requirements at 49 CFR Part 1013. The stock of ONCT was transferred immediately to Mr. Quinn as the Voting Trustee on June 29, 2007. The Voting Trust will not be dissolved until FGLK's control of ONCT is approved, or exempted.

### **EXPEDITED CONSIDERATION**

FGLK wants to assume control of ONCT as soon as possible so that the Voting Trust can be terminated and the control of ONCT can be transitioned to FGLK. Further, ONCT's lease currently is scheduled to expire at the end of December, and FGLK wants to assume control of ONCT in ample time to negotiate an extension with the County. Except for the connection between the carriers, the transaction would be eligible for the class exemption and would be effective in thirty days. Since there are no reasons for delay, FGLK requests that the Petition be made effective in a similar time frame.

## **CONCLUSION**

For the foregoing reasons, FGLK requests that the Board, under 49 U.S.C. §10502, exempt its proposed control of ONCT from regulation under 49 U.S.C. §§11323-11324. and that the exemption be made effective as early as possible.

Respectfully submitted.



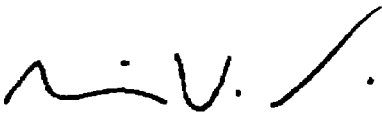
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215-563-9400  
Attorneys for Finger Lakes Railway Corp.

Dated: July 6, 2007

**VERIFICATION**

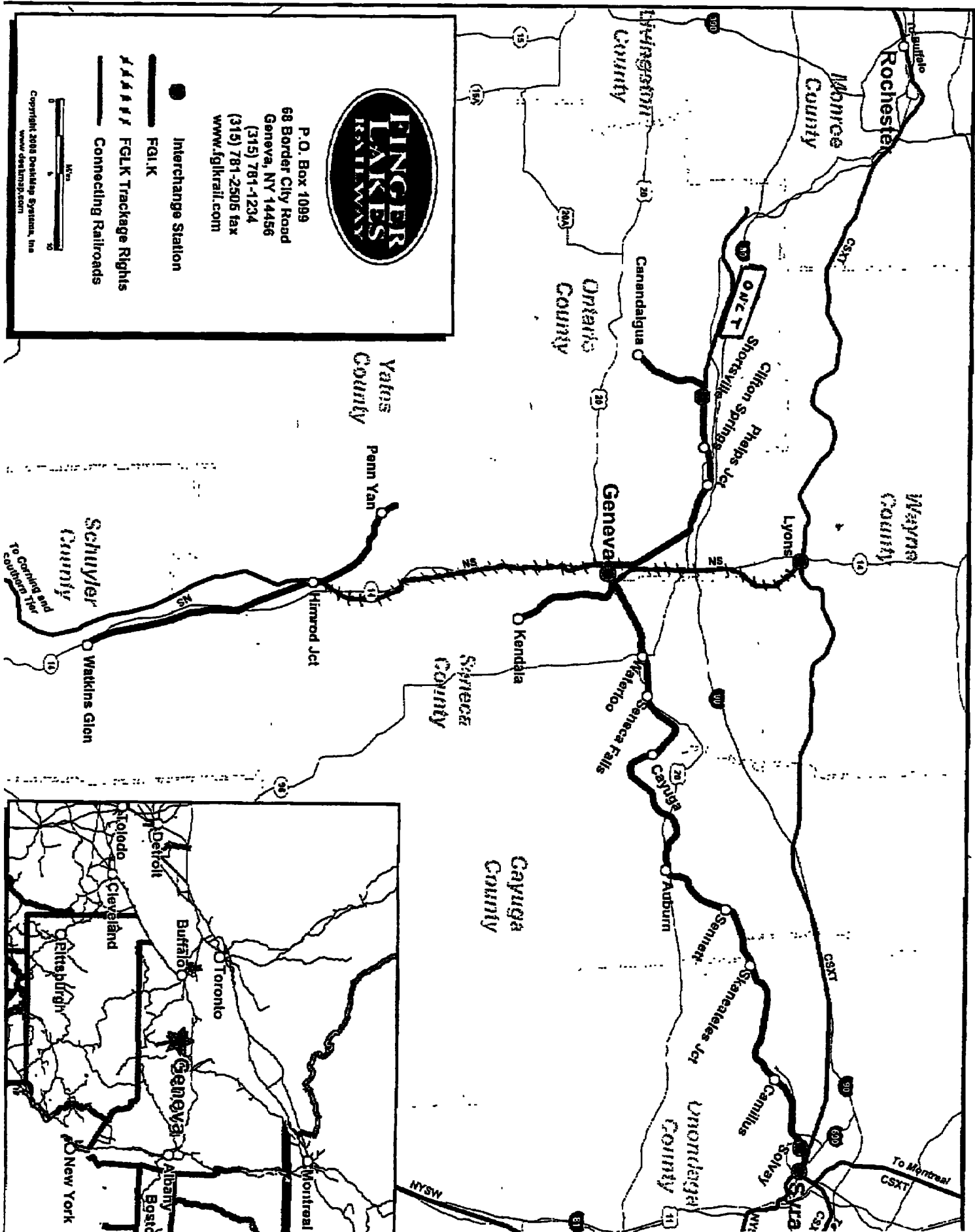
I, Michael V. Smith, President of Finger Lakes Railway Corp., verify  
under penalty of perjury that the foregoing is true and correct. Further, I certify that I am  
qualified and authorized to file this Verification.

Dated: July 6, 2007

  
\_\_\_\_\_  
Michael V. Smith

**EXHIBIT A**

**MAP**



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