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December 14, 2007

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

FILED

DEC 14 2007

**SURFACE
TRANSPORTATION BOARD**



RE Docket No. AB-55 (Sub-No. 675X), CSX Transportation, Inc. –
Abandonment Exemption—in Ware County, GA

Dear Secretary Williams

Enclosed are the original and 10 copies of a Petition for Exemption from 49
U.S.C. §10904 in the above-entitled proceeding and a check for the filing fee of \$5,700.
Also enclosed is a computer diskette in containing the Petition.

Please time and date stamp the additional copy of this letter and the Petition and
return them with our messenger. Thank you for your assistance.

If you have any questions please call or email me.

ENTERED
Office of Proceedings
DEC 14 2007
Part of
Public Record

Sincerely yours,

Louis E. Gitomer,
Attorney for: CSX Transportation, Inc.

FEE RECEIVED

DEC 14 2007

**SURFACE
TRANSPORTATION BOARD**

Enclosures

22 / 028

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (Sub-No 675X)

CSX TRANSPORTATION, INC -ABANDONMENT EXEMPTION-
IN WARE COUNTY, GA

PETITION FOR EXEMPTION

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INC.

Dated December 14, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB-55 (SUB-NO 675X)

**CSX TRANSPORTATION, INC –ABANDONMENT EXEMPTION–
IN WARE COUNTY, GA**

PETITION FOR EXEMPTION

CSX Transportation, Inc (“CSXT”) petitions the Surface Transportation Board (the “Board”) to exempt, under 49 U.S.C. § 10502, CSXT’s proposed abandonment from the offer of financial assistance provisions of 49 U.S.C. § 10904. CSXT has concurrently filed a Notice of Exemption (the “Notice”) to abandon a 1.08-mile rail line on its Southern Region, Jacksonville Division, Fitzgerald Subdivision between milepost AP 588.84, and milepost AP 587.76, all in Waycross, GA, in Ware County, GA (the “Line”).

The Board has accepted the filing of a Notice of Exemption under 49 C.F.R. § 1152.50 for abandonment and a Petition for Exemption under 49 C.F.R. § 1121 from the offer of financial assistance (“OFA”) process under 49 U.S.C. § 10904.¹ CSXT respectfully requests the Board to follow its precedent in this proceeding.

¹ *CSX Transportation, Inc —Abandonment Exemption—in Shelby County, TN*, STB Docket No AB-55 (Sub-No 684X) (STB served September 27, 2007)

SUPPORT FOR THE EXEMPTION FROM 49 U.S.C. § 10904

CSXT uses the Line to provide overhead service to shippers located elsewhere in Waycross, GA. No shippers are located on the Line. No shippers have been served on the Line for more than two years. Through a modification to its existing rail lines in Waycross, CSXT has been able to reroute the overhead traffic off of the Line to its shippers. CSXT does not expect any rail oriented business to develop on the Line, there is no overhead traffic on the Line, and there is no demand for service on the Line.

Abandonment of the Line has been coordinated with the City of Waycross and Ware County. The Line is no longer necessary for rail operations. A Memorandum of Understanding dated as of November 16, 2006 was entered between CSXT and the City of Waycross. The MOU required CSXT to: 1) complete certain capacity improvement projects, including double-tracking the CSXT mainline around Waycross; 2) construct a connecting track between CSXT lines to improve service to the customers; and 3) eliminate nine road crossings in Waycross. The MOU requires the City of Waycross to file a Notice of Interim Trail Use for the Line in order to convert the Line to interim trail use/rail banking and to preserve the corridor as a trail. CSXT is seeking the exemption from the OFA process so that the City of Waycross can fulfill its commitments under the MOU. CSXT has already fulfilled its commitments under the MOU. An OFA would frustrate the efforts of CSXT and the City of Waycross.

The Line runs through downtown Waycross, GA. Abandonment will permit the removal of nine road crossings. The Line runs immediately adjacent to the north side of Brunswick Avenue beginning at Tebeau Street on the east for 12 blocks until the west end of the proposed abandonment. CSXT does not serve any of the businesses located north of Brunswick Avenue.

that front on Albany Avenue, the next street north of Brunswick.² In addition, Waycross has agreed to and has stated that it intends to acquire the Line for interim trail use/rail banking under 16 U.S.C. § 1247(d).³

CSXT has filed the Notice so that it can remove the Line from downtown Waycross, remove nine grade crossings in downtown Waycross, and proceed to convert the Line to a trail through the orderly process established by Congress in 16 U.S.C. § 1247(d) and by the Board in 49 C.F.R. § 1152.29.

Because the Line is no longer needed for common carrier purposes, retention of the Line under the OFA process as regulated track is no longer necessary. There are no shippers located on the Line. In addition, CSXT has not been advised of any opposition to the abandonment and does not expect any such opposition. The abandonment is being supported by Waycross

In denying a request for exemption from the OFA process, the Board said

The OFA provisions reflect a Congressional desire to preserve, whenever possible, any prospect for continuing or resuming rail freight service on corridors that would otherwise be abandoned. *See Redmond-Issaquah R R Pres. Ass'n v STB*, 223 F.3d 1057, 1061-63 (9th Cir. 2000). While exemptions from 49 U.S.C. 10904 have been granted from time to time, they have been granted when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.⁴

This proceeding is distinguishable from *KCS Abandonment*. There are no shippers located on the Line. The Notice will not be opposed. The Line was used to move overhead traffic to other locations in Waycross, but has been replaced by a redesign of the CSXT lines in

² See the Map Attached as Exhibit 1 and view the satellite map for Waycross, GA at Google™ Maps

³ See the Attachment 5 to the Environmental Report submitted with the Notice

Waycross Post abandonment, the Line will be used for the public purposes of removing it from Waycross, eliminating nine highway grade crossings and conversion to interim trail use /rail banking

Where there has been no recent demand for rail service and there is no prospect that rail service will be required in the near future, instead of authorizing an OFA for speculative rail use of a line, CSXT contends that an exemption from the OFA process to permit the removal of the Line from downtown Waycross, the removal of nine grade crossings and the conversion of the line to interim trail use/rail banking is appropriate since rail banking the Line for future use is the purpose of interim trail use ⁵

ARGUMENT IN SUPPORT OF EXEMPTION FROM 49 U.S.C. § 10904

CSXT files this Petition under 49 U.S.C. § 10502 for an exemption from the provisions of 49 U.S.C. § 10904, in order to remove the Line from downtown Waycross, remove nine grade crossings, and to convert the Line to an interim trail. Under 49 U.S.C. § 10904, a line that has been authorized for abandonment may be acquired for continued rail purposes. Under 49 U.S.C. § 10502, the Board must exempt a transaction from regulation when it finds that

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and

⁴ *The Kansas City Southern Railway Company—Abandonment Exemption—Line in Warren County, MS*, STB Docket No. AB-103 (Sub-No. 21X) (December 12, 2007) (“KCS Abandonment”)

⁵ *Norfolk Southern Railway Company—Abandonment Exemption—in Norfolk and Virginia Beach, VA*, STB Docket No. AB-290 (Sub-No. 293X) (STB served Nov. 6, 2007); *see also CSX Transportation, Inc.—Abandonment—in Barbour, Randolph, Pocahontas, and Webster Counties, WV*, STB Docket No. AB-55 (Sub-No. 500) (STB served Jan. 9, 1997) and *Southern Pacific Transportation Company—Discontinuance of Service Exemption—in Los Angeles*

(2) either

(a) the transaction is of limited scope, or

(b) regulation is not necessary to protect shippers from the abuse of market power

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress encouraged the Board's predecessor agency to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong., 2d Sess. 105 (1980). See also *Exemption From Regulation—Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provision as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

County, CA, Docket No. AB-12 (Sub-No. 172X), et al. (ICC served Dec. 23, 1994) ("SPT Exemption").

A. The Application of 49 U.S.C. § 10904 Is Not Necessary to Carry Out the Rail Transportation Policy

Detailed scrutiny of the exemption from 49 U.S.C. § 10904 is not necessary to carry out the rail transportation policy.

An exemption would minimize the unnecessary expense associated with the preparation of valuations in the OFA process, expedite regulatory decisions and reduce regulatory barriers to exit 49 U.S.C. § 10101 (2) and (7). The Board and its predecessor, the Interstate Commerce Commission have granted exemptions from 49 U.S.C. § 10904 where the right-of-way is needed for a valid purpose and there is no overriding public need for continued rail service.⁶ CSXT contends that the removal of the Line from downtown Waycross, removal of nine grade crossings, and conversion of the Line to interim trail use/rail banking meets these criteria.

The imposition of an OFA condition would delay, if not thwart these public benefits where there is no demand for present rail service on the Line and no basis to believe that there is a need for future rail service.

Nor will the exemption from 49 U.S.C. § 10904 result in a loss of rail service. There is no local service over the Line, and all overhead traffic has been rerouted over other CSXT lines as requested by Waycross. CSXT is unaware of any demand for rail service over the Line.

⁶ See, *Doniphan, Kensett and Searcy Railway—Abandonment Exemption—In Searcy, White County, AR*, STB Docket No. AB-558X (STB served May 6, 1999); *Union Pacific Railroad Company—Abandonment Exemption—In Salt Lake County, UT*, STB Docket No. AB-33 (Sub-No. 116X) (STB served September 30, 1998), *K & E Railway Company—Abandonment Exemption—In Alfalfa, Garfield, and Grant Counties, OK and Barber County, KS*, STB Docket No. AB-480X (STB served December 31, 1996); and *SPT Exemption*

Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected since the public will not be deprived of any needed rail services.

B. This Transaction Is Of Limited Scope

The proposed transaction is of limited scope CSXT seeks exemption from 49 U.S.C. § 10904 for 1.08 miles of trackage in one county in one State.

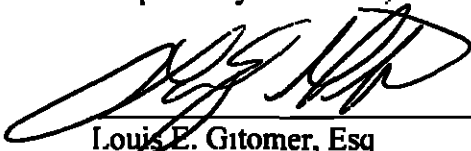
C. This Transaction Will Not Result In An Abuse Of Market Power.

There are no shippers located on the Line. The Line was used to move overhead traffic to shippers The overhead route has been replaced by a rearrangement of CSXT's lines in Waycross It is clear that the proposed exemption from 49 U.S.C. § 10904 presents no opportunity for an abuse of market power.

CONCLUSION

CSXT respectfully requests the Board to consider this Petition concurrently with the Notice of Exemption filed for the Line and grant an exemption from the provisions of 49 U.S.C. § 10904 with regard to the abandonment of the Line

Respectfully submitted,



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INC

Dated: December 14, 2007

EXHIBIT 1-MAP OF THE LINE IN WAYCROSS

