

Steelway Realty Corporation (“Steelway”) and CSXT concerning the continuing feasibility and viability for service of the South Steelway Boulevard Line. These recent events are described and confirmed in the appended Verified Statement of Dan Pigula, Managing Director, JGB Properties, LLC.¹ In support hereof, JGB states as follows:

1. As JGB has demonstrated, the involved South Steelway Boulevard Line is a common carrier line that is unauthorized, and JGB seeks a Board determination on that issue, along with other related matters pertaining to the right of construction, acquisition, operation, use, and potential abandonment of this Line.

2. As emphasized in JGB’s filings, the Board’s determination of these matters is essential in determining the rights and obligations of the parties with respect to the subject lines, and ultimately the continuing encumbrance of JGB’s property where there is no reasonable economic or other justification for the provision of current or future rail service. This is especially important here where the underlying property is poised to be utilized and developed for productive (non-rail) use, and where a purported

¹ JGB does not believe this Supplement constitutes a “reply-to-a-reply” since JGB is simply supplementing its Petition with new supporting factual information that was not available to it when it filed its Petition. However, to the extent the Board deems otherwise, JGB respectfully requests that it be granted leave to file this Supplement, under 49 C.F.R. § 1117.1, on grounds that the Supplement addresses information that was not available to JGB at the time it filed its Petition and that the information cited in this Supplement will assist the Board in its decisional process by establishing a more complete record. *See, e.g., Cal. High-Speed Rail Auth. – Construction Exemption in Merced, Madera & Fresno Cntys., Cal.*, STB Docket No. FD 35724 (STB served June 13, 2013), slip op. at 11 (reply-to-reply accepted “in the interest of compiling a more complete record”).

landowner is using the façade of an operating railroad to effectively thwart national policy favoring the use of unused railroad right of ways for other useful public purposes.

3. JGB's Petition is further supported by recent actions that have taken place with respect to the South Steelway Boulevard Line in recent weeks.

4. As described in Mr. Pigula's Verified Statement ("Pigula V.S."), very recently, in late October 2014, "it was discovered that someone had removed an additional length of rail trackage off of the South Steelway Boulevard rail line that is the subject of [this] proceeding." *Id.* at 1. The portion of the Line removed was located on National Grid's 50 feet of property running adjacent to the CSXT St. Lawrence Subdivision main line. *Id.* Neither JGB nor National Grid was responsible for, nor gave permission for the track to be removed. *Id.*

5. In his statement, Mr. Pigula further describes the facts and circumstances surrounding this track removal discovery, which summarizes as follows:

- (1) At some point in October 2014, a length of rail off of the South Steelway Boulevard rail line was removed.
- (2) The trackage that was removed was located on National Grid's property.
- (3) National Grid was not responsible for the recent track segment removal and did not give permission for the track to be removed.
- (4) JGB was not responsible for the track removal and did not give permission for the track to be removed.
- (5) All indications are that CSX representatives likely removed the track, confirmed through discussions with local CSX representatives on October 28, 2014.
- (6) The track removal now completely severs CSX's lead track and its connecting St. Lawrence Subdivision Main Line from the South Steelway Boulevard trackage.
- (7) The recent removal of the rail trackage renders the remaining tracks and corridor on JGB's property all the way

to the Ironwood warehouse space entirely and categorically unusable for future rail service, even if restored, because the remaining tracks and corridor are now completely severed from the CSX Main Line.

(8) As noted, I was made aware of the missing section in late October. To the best of my knowledge, neither CSX nor Ironwood has taken any actions to restore or repair the missing section.

(9) In other words, nothing has changed since the time of my discovery of the missing trackage.

Id. at 2.

6. Mr. Pigula's Verified Statement includes exhibits depicting the general location of the track removal (Exhibit DP-1) and photographs taken contemporaneously with the discovery of the missing trackage showing where the Line section was cut-out. These photographs also identify nearby torch marks (Exhibit DP-2) on National Grid's property.

7. Despite Ironwood/Steelway's and CSXT's desperate attempts to describe the unauthorized Line as somehow necessary for service sometime in the future to undescribed, elusive shippers, and their efforts to attempt to castigate JGB for "ripping up" track, in reality, this recent track removal episode demonstrates the complete lack of need and usefulness of the South Steelway Boulevard Line for current or future service.

8. For example, in CSXT's Reply (dated May 30, 2014) and Response (dated June 26, 2014), CSXT has asserted, among other things, the following:

- "All the parties agree that the track falls within the Board's jurisdiction." (CSXT Response at 5).
- "JGB is seeking a declaratory order that would in essence permit it to unilaterally terminate rail service to two shippers that CSXT has agreed to serve." (CSXT Reply at 3).

- “The removal of the tracks prevents and interferes with CSXT providing service to Ironwood’s property.” (*Id.* at 8).
- “[T]he public interest weighs in favor of rail serve [sic] over the easement.” (*Id.* at 12).

9. In this proceeding, JGB has strongly and fully disputed the above assertions as to the need and usefulness of the Line, which are unsubstantiated and without factual or legal basis (*see* JGB Petition at 25-30; JGB Reply at 20-23)² – except that JGB strongly agrees with CSXT’s admission that the STB has jurisdiction over the involved trackage. With respect to that issue, JGB has demonstrated that the South Steelway Boulevard Line is a common carrier line that is unauthorized, and on which a federal certificate of public convenience and necessity was required, but was not properly acquired, as even Ironwood and Steelway have admitted. *See* JGB Petition at 13-25; JGB Reply at 6-20.

10. The described CSXT assertions pertaining to the usefulness and feasibility of the Line for service, and similar assertions by Ironwood and Steelway, have been put into further serious doubt by this recent removal of an additional portion of the South Steelway Boulevard Line.

² The hollowness of CSXT’s assertions as for the future need for rail service over the Line is evidenced by the fact that, while CSXT says that JGB is attempting to “terminate rail service to two shippers that CSXT has agreed to serve,” the two referenced “shippers,” Ironwood and Steelway, are actually warehouse landlords, and not shipper-tenants, who have never sought to ship or receive rail service from CSXT on the Line. *See* JGB Reply at 11 n.11.

11. As Mr. Pigula clarifies, neither JGB nor National Grid was responsible for, and did not give permission for the track removal. Mr. Pigula explains, “[a]ll indications are that CSX representatives likely removed the track, confirmed through discussions with local CSX representatives on October 28, 2014,” the remainder of the track is now “completely sever[ed]” from CSXT’s St. Lawrence Subdivision, and that “renders the remaining tracks and corridor on JGB’s property all the way to the Ironwood warehouse space entirely and categorically unusable for future rail service, even if restored.” Pigula V.S. at 2.

12. Whether Ironwood/Steelway or CSXT will attempt to investigate and seek answers as to the factual circumstances and the responsible party (whether it be CSXT or anyone else), and then seek to get the necessary permission (from National Grid and this Board³) to seek to restore the trackage on National Grid’s property is unclear. At this point in time, it is Mr. Pigula’s understanding that “neither CSX nor Ironwood has taken any actions to restore or repair the missing section.” *Id.* at 2.

13. JGB has requested that, if the Board ultimately concludes that the trackage in issue constitutes common carrier trackage that was not unlawfully constructed, the Board should approve its abandonment under the “*de facto*” standard described in *Modern Handcraft, Inc.–Abandonment in Jackson County, MO*, 363 I.C.C.

³ As JGB has explained in its Petition, since no permission was ever obtained to construct the Line in the first place, any initiatives to construct/reconstruct, acquire, operate, or use such rail lines for rail service absent prior agency approval are prohibited, and subject to possible civil penalties for each day the violation continues under 49 U.S.C. § 11901.

969 (1981), without the need for compliance with the normal application/informational filing requirements for adverse abandonments given the clear lack of any meaningful traffic potential. JGB Petition at 25-32; JGB Reply at 20-22. This recent track removal event, in addition to CSXT's previous spiking of the trackage over a decade ago – along with Ironwood/Steelway allowing the Line to further deteriorate over that time while doing nothing to restore the track to operational condition – further establishes that the Line has no actual potential demand for traffic sufficient to establish the financial feasibility of operations, currently or in the future.

14. As JGB has demonstrated, any assertions that JGB's actions may have somehow interfered with an authorized rail line, and viable and feasible rail service over the trackage, are belied by the actual facts. The Line remains unauthorized, and Ironwood/Steelway's persistent efforts to construct, acquire, operate, or use the unauthorized Line for possible rail service should be declared by this Board to be prohibited.

CONCLUSION

The recent removal of additional South Steelway Boulevard Line trackage supports the relief requested by JGB and brings into further serious doubt assertions made concerning the continuing feasibility and viability of Line service. For the foregoing reasons, the Board should allow this Supplement and grant JGB's request for a declaratory order, as set forth in pages 1 and 2 of its Petition.

Respectfully submitted,

 /s\

Peter A. Pfohl
Christopher A. Mills
Slover & Loftus LLP
1224 Seventeenth St. N.W.
Washington, D.C. 20036
Telephone: (202) 347-7170
pap@sloverandloftus.com

Dated: December 9, 2014

*Attorneys for Petitioner
JGB Properties, LLC*

CERTIFICATE OF SERVICE

I hereby certify that this 9th day of December, 2014, I served copies of the foregoing Supplement by First Class United States Mail and/or more expedited means upon counsel of record for Ironwood LLC/Steelway Realty Corporation and CSX Transportation, Inc., as follows:

Karyn A. Booth
David E. Benz
Thompson Hine LLP
1919 M Street N.W., Suite 700
Washington, D.C. 20036

*Counsel for
Ironwood, LLC and
Steelway Realty Corp.*

Louis E. Gitomer
Melanie B. Yasbin
Law Offices of Louis E. Gitomer
600 Baltimore Avenue, Suite 301
Towson, MD 21204

Kim Bongiovanni
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

Counsel for CSX Transportation, Inc.

\s\
Peter A. Pfohl

**Verified Statement of
Dan Pigula
Managing Director
JGB Properties, LLC**

My name is Dan Pigula and I am the Managing Director of JGB Properties. The purpose of this Statement is to inform the Surface Transportation Board about a recent development pertaining to the South Steelway Boulevard rail line that is the subject of a proceeding currently before the agency in STB Finance Docket No. 35817.

In late October 2014, it was discovered that someone had removed an additional length of rail trackage off of the South Steelway Boulevard rail line. The piece of rail in question that was removed lies on land owned by the electric utility company National Grid. National Grid owns 50' of property that runs adjacent to the CSX's St. Lawrence Subdivision "Main Line," which positions National Grid between the CSX Main Line and JGB Properties' parcel boundary. I have attached a schematic depicting the approximate location of the track removal, which is attached as Exhibit DP-1 to this Statement, and on that schematic I have marked the approximate location of the missing rail with an "X".

I have also included two pictures of the missing section of rail taken at the time of the discovery of the missing trackage attached as Exhibit DP-2. If you look close enough you can see evidence of freshly torched tie downs and bolts that were cut in order to free the section that was taken, as well as the fresh torch marks that were left on the remaining piece of rail.

On the afternoon of October 28, 2014, at approximately 2:30 p.m., Charles Andrews from National Grid; Jerry Purdy from National Grid; Jay Bernhardt (Chairman at JGB Enterprises, Inc.); and I met at the site to confirm the severing of the rail line, and we discussed what may have happened to the missing rail trackage. As noted earlier, National Grid owns the property where the rail is missing. Both of the representatives from National Grid (Jerry Purdy and Charles Andrews) confirmed that National Grid representatives did not remove the trackage, they never gave anyone permission to take any section of rail from this property, and they had no knowledge of when the piece of trackage was taken or why. During our discussion at the site, Mr. Purdy and Mr. Andrews further confirmed that they were confident most National Grid employees would not know the rails existed (and therefore could not possibly have given permission to remove them). They said further that National Grid would not likely give permission to anyone to access their property to remove such rail trackage for the simple fact that the company would not want to take any of the liability risk it might assume by giving such permission. Mr. Purdy and Mr. Andrews further said that they do not know who took the rail and/or what use it would have been for anyone to take it.

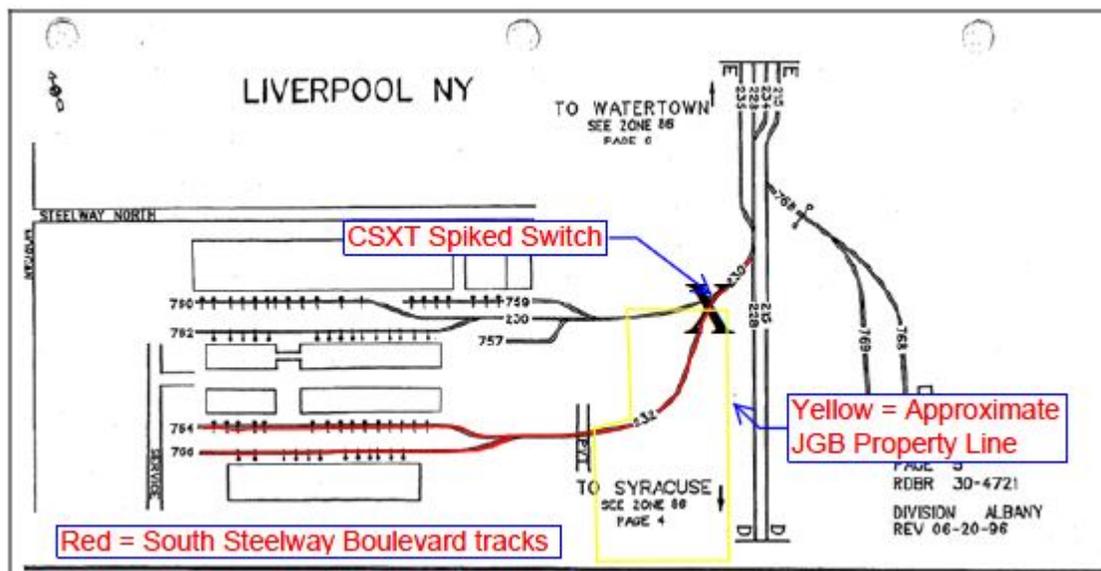
During the afternoon meeting on October 28, 2014, a local CSX representative was spotted in the area and was waved over in an attempt to help shed further light on the track removal. The CSX representative (unfortunately, I cannot recall his name or title), was hesitant to go on record, but he informed the group that CSX often takes pieces of "lighter" rail to fix or repair sections of similar gauge rail on other rail spurs. He explained that the "lighter rail" was hard to get and so they often come and take pieces off of existing sidings that they deem

“unusable, inoperable or obsolete.” It was unclear to them why the involved individuals chose the piece of trackage that they did. Everyone in attendance, however, agreed that the proximity to the main line made the likely culprit CSX, because the piece of trackage was very close to the CSX main line and just south of the switch that CSX had previously spiked.

In summary, the facts on which I have knowledge show that:

- (1) At some point in October 2014, a length of rail off of the South Steelway Boulevard rail line was removed.
- (2) The trackage that was removed was located on National Grid’s property.
- (3) National Grid was not responsible for the recent track segment removal and did not give permission for the track to be removed.
- (4) JGB was not responsible for the track removal and did not give permission for the track to be removed.
- (5) All indications are that CSX representatives likely removed the track, confirmed through discussions with local CSX representatives on October 28, 2014.
- (6) The track removal now completely severs CSX’s lead track and its connecting St. Lawrence Subdivision Main Line from the South Steelway Boulevard trackage.
- (7) The recent removal of the rail trackage renders the remaining tracks and corridor on JGB’s property all the way to the Ironwood warehouse space entirely and categorically unusable for future rail service, even if restored, because the remaining tracks and corridor are now completely severed from the CSX Main Line.
- (8) As noted, I was made aware of the missing section in late October. To the best of my knowledge, neither CSX nor Ironwood has taken any actions to restore or repair the missing section.
- (9) In other words, nothing has changed since the time of my discovery of the missing trackage.

EXHIBIT DP-1



This annotated schematic depicts the approximate location of the recently removed rail trackage; the location is marked with an “X” and is on National Grid’s property. This schematic (missing the “X”) was included as Diagram JFB-1 to the Verified Statement of John F. Betak, Ph.D. in JGB’s April 8, 2014 Petition for Declaratory Order, and was also included at page 6 of the argument section of the Petition.

Exhibit DP-2



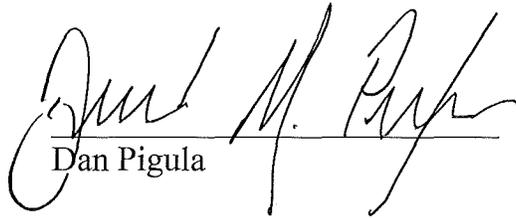
This is a true and accurate depiction of the missing rail section. This picture shows the freshly torched tie downs and bolts that were cut to free the section that was taken.



This is a true and accurate depiction of the missing rail section. This picture shows the fresh torch marks that were left on the remaining piece of rail.

VERIFICATION

I, Dan Pigula, verify that I have read the foregoing Statement, know the contents thereof, and that the same are true as stated to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this statement.


Dan Pigula

Executed on December 8, 2014