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October 9, 2012

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Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423



Re: *All Aboard Florida-Operations LLC & All Aboard Florida-Stations LLC-
Authority to Construct and Operate-Petition for Exemption From 49 U.S.C.
§ 10901- Passenger Rail Line Between Miami, FL and Orlando, FL
STB Finance Docket No. 35680*

Dear Ms. Brown:

Enclosed for filing in the above-referenced matter are the following:

- An original and ten copies of a Petition for Exemption from 49 U.S.C. § 10901, a check for \$76,700 in payment of the filing fee, and two CDs containing the Petition in pdf searchable format
- An original and ten copies of a Motion to Dismiss the Petition for Exemption and two CDs containing the Motion in pdf searchable format.

We originally attempted to file these documents on Friday, October 5, 2012, but learned that the Board was closed on that date.

Please acknowledge receipt of the enclosed documents for filing by date-stamping the extra copies and returning them to our messenger. If you have any questions, please contact the undersigned counsel.

FILED

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**SURFACE
TRANSPORTATION BOARD**

Sincerely,

Terence M. Hynes

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EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Finance Docket No. 35680

**ALL ABOARD FLORIDA – OPERATIONS LLC & ALL ABOARD FLORIDA –
STATIONS LLC – AUTHORITY TO CONSTRUCT AND OPERATE –
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 – PASSENGER RAIL LINE
BETWEEN MIAMI, FL AND ORLANDO, FL**

PETITION FOR EXEMPTION

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**SURFACE
TRANSPORTATION BOARD**

**Terence M. Hynes
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*Attorneys for All Aboard Florida – Operations LLC
and All Aboard Florida – Stations LLC*

Dated: October 5, 2012

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Finance Docket No. 35680

**ALL ABOARD FLORIDA – OPERATIONS LLC & ALL ABOARD FLORIDA –
STATIONS LLC – AUTHORITY TO CONSTRUCT AND OPERATE –
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 – PASSENGER RAIL LINE
BETWEEN MIAMI, FL AND ORLANDO, FL**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. § 10502, All Aboard Florida – Operations LLC (“AAF-O”) and All Aboard Florida – Stations LLC (“AAF-S”) (collectively, “Petitioners”) hereby submit this Petition for Exemption (“Petition”) to petition the Surface Transportation Board (“Board”) for an exemption from the prior approval requirements of 49 U.S.C. § 10901 for Petitioners to construct and operate a 230-mile intercity passenger railroad that will connect Orlando, Florida and Miami, Florida, with intermediate stations in Fort Lauderdale and West Palm Beach, Florida (the “All Aboard Florida Line”). Because the rail line that Petitioners plan to construct will be located entirely within the State of Florida and will not be part of the interstate passenger rail network, Petitioners are concurrently filing a motion to dismiss this Petition for lack of jurisdiction. Petitioners are undertaking this two-step process to ensure that the Board concurs that the construction and operation of the All Aboard Florida Line does not require Board authorization and – in the event that the Board disagrees – to provide the Board with sufficient information to proceed with an exemption for a passenger construction project that will benefit

Florida residents, businesses and visitors by providing a new, convenient, environmentally friendly and cost-effective way to travel between Orlando and Miami, Florida.

Petitioners respectfully request that the Board expedite its consideration of this Petition and the accompanying Motion to Dismiss so that Petitioners may proceed to arrange financing for the project and commence construction. Petitioners have announced a goal of having the All Aboard Florida Line operational by January 1, 2015. *See Verified Statement of P. Michael Reininger (“Reininger V.S.”) at 6.* Achieving that goal will require Petitioners to secure financing, commence construction, place orders for rolling stock, and obtain all necessary regulatory approvals promptly. While Petitioners believe that they do not need Board authorization to pursue this project, Petitioners wish to ensure that the Board agrees with that assessment and that Petitioners’ construction would not be unauthorized. Moreover, Petitioners are exploring the possibility of obtaining financing for parts of the project. As part of that effort, Petitioners are currently in discussions with the Federal Railroad Administration (“FRA”) regarding the possibility of obtaining financing for part of the construction under FRA’s Railroad Rehabilitation and Improvement Financing (“RRIF”) program. *See id.* In connection with the RRIF process, FRA has requested that Petitioners obtain confirmation from the Board that Petitioners either have, or do not require, Board authorization to construct and operate this passenger service. The Board’s action in this docket is thus a prerequisite for FRA to act on a RRIF application. For these reasons, Petitioners ask the Board to act on the Petition as soon as possible and before December 31, 2012.

I. BACKGROUND

A. Petitioners

Petitioners AAF-O and AAF-S are developing the All Aboard Florida Line. *See Exhibit 1 (Map of All Aboard Florida Line); Reininger V.S. at 1-2.* AAF-O will construct and

operate on the new passenger line; AAF-S will be responsible for developing and managing passenger stations to be constructed along the route. *See* Reininger V.S. at 2. Both AAF-O and AAF-S are wholly owned subsidiaries of Florida East Coast Industries, Inc. (“FECI”). *See id.*

B. The All Aboard Florida Line

Through the All Aboard Florida Line, Petitioners propose to offer frequent, regularly scheduled trains traveling daily with amenities such as meal service and Wi-Fi that will make the travel time productive for passengers. *See* Reininger V.S. at 2-3. The proposed intercity passenger service will address an important public need by providing an efficient, dependable and convenient transportation option for Florida residents and visitors, and promoting tourism and business development, while reducing traffic on Florida’s congested highways.

The All Aboard Florida Line will operate primarily on tracks to be constructed within an existing right-of-way along the east coast of Florida (the “FEC Corridor”) that is owned by Florida East Coast Railway, L.L.C. (“FECR”).¹ *See* Reininger V.S. at 2. AAF-O currently holds an easement to construct and provide passenger service along the FEC Corridor.² *See id.* at 3. Approximately 200 miles of the All Aboard Florida Line – the segment between Miami and Cocoa – will be built within the FEC Corridor, alongside FECR’s existing tracks. *See id.* Rights to any additional land needed for the remainder of the All Aboard Florida Line would be

¹ FECI and FECR are owned by equity funds that are controlled by Fortress Investment Group LLC and its affiliates. *See* Reininger V.S. at 3.

² Because AAF-O holds an easement to develop passenger service within the FEC Corridor, it does not need to acquire any land from FECR to proceed with construction or operation of the All Aboard Florida Line. However, AAF-O and FECR may choose to enter into a transaction that would transfer land in the FEC Corridor to AAF-O in the future. AAF-O and FECR would structure any such transaction in a manner that would ensure that it would not transfer FECR’s common carrier obligation or interfere with FECR’s freight rail service over its existing network. *See Maine – Acquisition and Operation Exemption – Maine Central Railroad*, 8 I.C.C.2d 835 (1991) (“*State of Maine*”). Before AAF-O and FECR enter into any such transaction, the details thereof would be submitted to the Board to confirm compliance with the *State of Maine* doctrine.

obtained through (1) the acquisition of minor segments of land where required to optimize travel time; and (2) for the east-west segment of the All Aboard Florida Line connecting Cocoa and Orlando, through the negotiation of leases and/or other rights to use certain rights-of-way owned by the Florida Department of Transportation (“FDOT”) and the Orlando Orange County Expressway Authority (“OOCEA”). *See id.*

The FEC Corridor originally consisted of double-track rail that supported both freight and passenger service. *See Reininger V.S. at 3.* FECR ceased passenger operations in 1968. *See id.* Much of the double-track rail has been removed to balance railroad service needs with capacity and operating and maintenance costs, but the railroad subgrade, embankments and track bed still exist in most places along the system. *See id.* Existing right-of-way widths are typically at least 100 feet throughout the FEC Corridor, and the system was built and maintained to FRA Class IV track standards, permitting 60 mph freight and 79 mph passenger operations. *See id.*

Using an existing rail corridor for the majority of the All Aboard Florida Line significantly limits environmental impacts, because the construction of passenger tracks will primarily take place within an existing 100-foot-wide right of way that has been used continuously for rail transportation for over a century. *See Reininger V.S. at 4.* Adding and replacing tracks within an existing corridor requires less construction than a “green-field” project, thereby resulting in minimal disruption to the environment and local communities. Construction of a rail line on a new corridor typically requires substantial earthwork to prepare the roadbed, including excavation, grading, and clearing and grubbing of vegetation. Conversely, installing or restoring track on an existing rail right-of-way requires less earthwork and does not implicate water, species, or other more typical environmental impacts. Maintenance of traffic is also minimized when working within an existing transportation

corridor. Further, because the FEC Corridor passes through the hearts of Miami, Fort Lauderdale and West Palm Beach, the construction of a passenger line within this corridor allows passenger stations to be optimally located within metropolitan centers. *See id.*

The east-west segment of the All Aboard Florida connecting Cocoa and Orlando will require access to additional right-of-way that is not currently controlled by AAF. *See Reininger V.S. at 4.* To that end, Petitioners will submit a response to the State of Florida Department of Transportation Request For Proposals for Leasing of FDOT and OOCEA Rights of Way for Intercity Passenger Rail System issued on October 3, 2012,³ in order to propose a structure whereby Petitioners will obtain access to the rights-of-way owned by FDOT and OOCEA for use in constructing and operating the Cocoa-to-Orlando segment of the All Aboard Florida Line. *See id.* When constructed, Petitioners plan to use the Cocoa – Orlando segment exclusively for passenger operations. *See id.*

The All Aboard Florida Line would be a stand-alone intrastate passenger rail system that will not be part of the national rail network. The All Aboard Florida Line will not connect with the lines of Amtrak or any other interstate passenger rail service provider. *See Reininger V.S. at 5.* Rather, Petitioners will operate exclusively intrastate passenger trains, and the transportation services that Petitioners offer will be passenger transportation between points in Florida. Petitioners have no current plans to provide through ticketing with Amtrak or any other interstate passenger operator for transportation beyond Florida. *See id.* While the All Aboard Florida Line's tracks may physically cross over, or connect with, the adjacent tracks on the FECR freight corridor, Petitioners will not participate in any intrastate or interstate freight movements. *See id.*

³ *See* http://www.dot.state.fl.us/procurement/Lease_Of_ROW_Adv.shtm.

Further, the All Aboard Florida Line's tracks will not connect with the tracks of any freight railroad other than FECR. *See id.*

As for the connection of the tracks within the FEC Corridor, the proposed operation of the All Aboard Florida Line contemplates the use of both tracks of the double-track railroad for freight and passenger service.⁴ *See Reininger V.S.* at 5. To keep the freight service operating at its on-time level and provide a high degree of reliability for the passenger service, one new dispatch district controlled by FECR is planned between Miami and West Palm Beach for the unified control of the tracks for both freight and passenger services. *See id.* FECR dispatchers will direct freight trains on the most expeditious route to keep them moving and on-schedule, while allowing for the faster passenger trains to continue to operate at their higher speed and with few, if any, diverging moves en route. *See id.* The faster passenger trains will generally be routed on the tangent track with the fewest diverging moves, and freight trains will be routed to the adjacent track, clearing the way for the passenger trains, while keeping the freight trains moving and on-time. *See id.*

Petitioners have announced a goal of having the All Aboard Florida Line operational by January 1, 2015. *See Reininger V.S.* at 6. The new intercity passenger rail system would provide frequent service (consisting of approximately 16-19 daily roundtrip trains that will be approximately 900 feet long). *See id.* This schedule would allow hourly train service in each direction during peak periods. *See id.* Trains will operate at speeds up to 79 mph between Miami and West Palm Beach and up to 110 mph on the newly-constructed passenger tracks

⁴ AAF-O contemplates entering into an agreement with FECR pursuant to which AAF-O would obtain the right to operate passenger trains over portions of FECR's existing tracks, and FECR would gain the right to operate freight trains over the newly-constructed AAF-O tracks. Such an arrangement would enhance the efficiency of both passenger and freight service offered by AAF-O and FECR, respectively. FECR would, to the extent required, seek STB authorization or exemption for those future arrangements prior to implementing them.

between West Palm Beach and Orlando. *See id.* Petitioners expect that the new passenger service will be capable of transporting passengers between Orlando and Miami in approximately three hours. *See id.*

The All Aboard Florida Line will be privately owned, maintained and operated. Petitioners are not seeking any public operating subsidies for the project. *See Reininger V.S.* at 6. However, Petitioners are exploring the possibility of obtaining financing for parts of the project, including a potential RRIF loan for construction. *See id.* As detailed below, Petitioners are in discussions with FRA about a potential RRIF loan and are working with FRA to complete an Environmental Assessment (“EA”) and Section 4(f) Statement for a phase of the All Aboard Florida Line with independent utility, all in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4332) (“NEPA”) in order to maintain the ability to apply for a loan under the RRIF program pursuant to 49 C.F.R. Part 260.

C. The All Aboard Florida Line Serves An Important Public Need.

The All Aboard Florida Line offers a private-sector solution to the long-recognized need for viable intercity passenger rail service in Florida. FDOT has highlighted the need for new infrastructure to address rising highway congestion in Florida and has identified intercity passenger rail as a preferred approach to solving that problem. *See Reininger V.S.* at 7. FDOT developed a vision plan for intercity passenger rail, which projects that intercity travel within the state will grow from slightly more than 100 million trips in 2006 to nearly 200 million trips by 2020, and 320 million trips by 2040.⁵ This increase will exacerbate existing transportation problems and require development of significant new infrastructure to meet the needs of the

⁵ Florida Department of Transportation, Florida Intercity Passenger Rail “Vision Plan” (August 2006), *available at* <http://www.dot.state.fl.us/rail/Publications/Plans/06VisionPlan/ExecReportFinal.pdf>.

public. In a 2009 report FDOT reaffirmed that congestion on Florida's highways can be mitigated by a passenger rail alternative, which would also serve to increase the mobility of tourists, business travelers and residents.⁶ The rail system envisioned by Petitioners will remove more than three million cars from Florida's roadways annually, mitigating traffic congestion and reducing carbon emissions. *See* Reininger V.S. at 7.

In addition to connecting Southeast Florida's large metropolitan areas, the All Aboard Florida Line will generate substantial economic opportunities for Floridians. For example, it is expected that project construction will create more than 6,000 new jobs for Floridians. *See* Reininger V.S. at 7. Upon completion of construction, AAF-O rail operations are also projected to create another 1,000 permanent jobs, and even more employment opportunities from expected transit-oriented development around the rail stations. *See id.* At the same time, the taxpayers of Florida will enjoy savings from reduced highway maintenance costs because there will be fewer cars on the road, and the state as a whole will benefit from reduced congestion and less pollution and greenhouse gases. *See id.*

D. Environmental Review

The All Aboard Florida Line is a clear net benefit to Florida's economy, environment, and residents. The creation of an intercity passenger rail option will give Florida's businesses and travelers an environmentally friendly alternative to travel via the state's congested highways. Further, because most of the All Aboard Florida Line will be constructed on the existing FEC Corridor, the project can be developed with minimal environmental and community impacts. In essence, Petitioners' new project simply represents the restoration of passenger service over a

⁶ Florida Department of Transportation, *2009 Florida Rail System Plan: Policy Element* (March 2009), available at <http://www.dot.state.fl.us/rail/PlanDevel/Documents/2009PolicyElementoftheRailSystemPlan-webfinal.pdf>.

right of way that was originally constructed as a passenger railroad linking the communities on Florida's east coast. *See Reininger V.S. at 8.* Because the new passenger tracks will be constructed within an existing corridor that is in use and has historically seen heavy freight traffic, Petitioners will be able to develop a new passenger service in a manner that will not significantly impact ecologically sensitive areas or wetlands; levels of noise, vibration, or pollutants; or historic resources. *See id.* Moreover, any potential adverse impacts are far outweighed by the environmental, health, and public policy benefits of developing an intercity passenger rail option in one of the most congested areas of the country. *See id.*

In connection with a potential RRIF loan application for a phase of the All Aboard Florida Line that would have independent utility, Petitioners have been working with the FRA to prepare an EA for a phase of the All Aboard Florida Line with independent utility. *See Reininger V.S. at 8.* Petitioners have submitted extensive environmental documentation to FRA and have consulted with FRA staff about the environmental benefits and impacts of the project. *See id.* It is anticipated that FRA will issue an EA in the very near future and well before the end of this year. *See id.*

II. DISCUSSION

As detailed in the Motion to Dismiss filed with this Petition, Petitioners believe that the construction and operation of the All Aboard Florida Line does not require prior Board authorization because the All Aboard Florida Line will be a purely intrastate passenger railroad. If the Board disagrees, however, it should exempt the construction and operation of the All Aboard Florida Line from the prior approval requirements of 49 U.S.C. § 10901. The construction and operation of this new intercity passenger line is clearly in the public interest and should be approved. An exemption from prior approval under 49 U.S.C. § 10502 is warranted because the exemption is needed to promote important goals of the national rail transportation

policy by reducing regulatory barriers to entry for this new intercity passenger rail provider and because the application procedures, in whole or in part, are not needed to protect shippers from the abuse of market power.

A. The Proposed Construction and Operation of All Aboard Florida Are in the Public Interest.

The Interstate Commerce Act incorporates a general presumption that rail construction projects should be approved. *See Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901*, 1 S.T.B. 75, 79 (1996). This was not always the case – prior versions of the Act instructed the Interstate Commerce Commission to examine new construction proposals with care and not to approve new construction without finding that it was consistent with the public convenience and necessity. *See Alaska Railroad Corp. – Construction and Operation Exemption – Rail Line between North Pole and Delta Junction, AK*, STB Finance Docket No. 34658, at 5 n.4 (STB served Jan. 6, 2010) (explaining statutory policy shift from pre-Staggers regime where ICC was “directed to scrutinize rail construction projects closely to prevent excess rail capacity”). But the Staggers Act and the Interstate Commerce Commission Termination Act of 1995 significantly changed the regulatory landscape to require approval of a new rail line construction project unless the Board finds that it is inconsistent with the public convenience and necessity. As the Board has explained,

[I]n enacting the ICC Termination Act of 1995, Pub. L. No. 104- 88, 109 Stat. 803, Congress intended to facilitate rail construction by changing the statutory standard from requiring approval if the agency finds that a project is consistent with the public convenience and necessity (PC&N) to requiring approval unless the agency finds the project is inconsistent with the PC&N. Under this new standard, proposed rail construction projects are to be given the benefit of the doubt.

The Burlington Northern & Santa Fe Ry. Co. – Construction and Operation Exemption – Seadrift and Kamey, TX, STB Finance Docket No. 34003, at 4 (June 19, 2001). In short,

“Congress has established a presumption that rail construction projects are in the public interest unless shown otherwise.” *DesertXpress Enterprises, LLC – Construction & Operation Exemption – In Victorville, CA and Las Vegas, NV*, STB Fin. Docket No. 35544, at 3 (Oct. 20, 2011) (“*DesertXpress*”).⁷

Under the current statutory landscape, a party is not required to demonstrate a public need for new construction. *See Illinois Central R.R. Co. – Construction and Operation Exemption – In East Baton Rouge Parish, LA*, STB Finance Docket No. 33877, at 2 (May 25, 2001) (“Neither under the exemption criteria of § 10502 nor under the prior approval requirements of § 10901 is there a requirement of a showing of public need for the facilities proposed to be constructed.”). Rather, a party need only demonstrate that the new construction is not inconsistent with the public convenience and necessity. Here, there is no question that construction of a new passenger rail line on an existing rail corridor is in the public interest and consistent with both the national Rail Transportation Policy as expressed in 49 U.S.C. § 10101 and with federal policies encouraging the development of passenger rail options.

B. The Proposed Construction and Operation Meet the Criteria for An Exemption From Prior Approval Requirements.

The construction and operation of the All Aboard Florida Line easily meet the standards for a § 10502 exemption from prior approval requirements. Construction and operation of a new rail line require prior Board approval pursuant to 49 U.S.C. § 10901. Under 49 U.S.C. § 10502(a), however, the Board shall exempt a proposed rail line construction from the detailed application procedures of § 10901 if it finds that (1) those procedures are not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or

⁷ *See also Northern Plains Resource Council, Inc. v. STB*, 668 F.3d 1067, 1089-92 (9th Cir. 2011) (affirming Board’s interpretation of § 10901 finding a presumption that new construction should be approved).

service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power. *See, e.g., DesertXpress* at 3; *Alaska Railroad Corp.* at 5-6. The Board is required to use exemptions to reduce regulations wherever possible.⁸

The proposed construction and operation of the All Aboard Florida Line satisfies all of the § 10502 criteria for exemption. The Board therefore should exempt the project from § 10901's detailed application procedures.

1. An Exemption Will Promote The Rail Transportation Policy.

As for the first prong of the § 10502 standard for granting exemptions, a formal application process is not necessary to carry out the Rail Transportation Policy set forth in 49 U.S.C. § 10101. *See* 49 U.S.C. § 10502(a)(1). Granting an exemption for the construction of the All Aboard Florida Line promotes no fewer than five provisions of the Rail Transportation Policy.

First, the proposed project will “ensure the development and continuation of a sound rail transportation system . . . to meet the needs of the general public.” *Id.* at § 10101(4). The creation of a dedicated passenger rail line connecting major Florida metropolises – with private investment – clearly will contribute to the development of a sound rail transportation system by providing an important new transportation option to passengers traveling between Miami and Orlando.

Second, the creation of a new passenger transportation alternative for travelers in Florida will “foster sound economic conditions in transportation and . . . ensure effective competition

⁸ *See, e.g., American Trucking Associations v. ICC*, 656 F.2d 1115, 1119 (5th Cir. 1981) (explaining that the ICC was charged with the responsibility of actively pursuing exemptions for transportation and service that comply with the section's standards); H.R. Rep. No. 96-1430, at 105 (1980) (House Report on Staggers Act explaining that the ICC was charged with removing “as many as possible of the Commission’s restrictions”).

and coordination between rail carriers and other modes [of transportation]" by offering a convenient, dependable and environmentally friendly alternative to travel by automobile or bus service. *Id.* at § 10101(5).

Third, the project will "encourage and promote energy conservation" by creating an alternative to automobile and air travel between Florida cities that will substantially reduce traffic congestion and emissions and save fuel. *Id.* at § 10101(14).

Fourth, an exemption would "minimize the need for Federal regulatory control over the rail transportation system" by avoiding an unnecessarily cumbersome application and approval process for the All Aboard Florida Line. *Id.* at § 10101(2). Creating new passenger rail service for Floridians within an existing rail corridor is unquestionably a positive development that will promote transportation options, benefit the environment, and serve the public interest. Requiring a lengthy application and approval process for this plainly beneficial project is not a prudent use of the Board's resources.

Fifth, an exemption would "reduce regulatory barriers to entry into . . . the industry." *Id.* at 10101(7). An exemption would minimize the time and administrative expense associated with Petitioners' construction and commencement of operations and facilitate Petitioners' ability to obtain financing, including possible financing under FRA's RRIF program. Regulatory barriers to the creation of new capacity should be minimized when possible in order to promote new transportation options.

In short, granting an exemption will promote the goals of § 10101's rail transportation policy and will not run counter to any of that section's provisions. Indeed, the Board and the ICC have repeatedly found that rail construction and operation projects promote the national rail transportation policy set forth in § 10101 by providing better transportation service options,

allowing for competition with other modes, and encouraging the provision of more efficient transportation service.⁹

Moreover, granting an exemption will promote the national transportation priority of expanding access to passenger rail services in the United States. This national commitment to developing an improved passenger rail network is recognized by the FRA. *See* Federal Railroad Administration, *Vision for High-Speed Rail in America* (April 2009). The FRA has determined that the benefits of passenger rail include the creation of “[s]afe and efficient transportation options,” the promotion of “[e]nergy efficiency and environmental quality,” and the development of more “[i]nterconnected livable communities.” *Id.* at 2-3. For these reasons the federal government has determined to pursue strategies “to build a new national network of . . . intercity passenger rail corridors.” *Id.* at 19. Importantly, it has also been recognized that the development of such a network can be greatly facilitated by building infrastructure on existing rights of way. *See id.* at 3.

2. Regulation is Not Needed to Protect Shippers from the Abuse of Market Power.

The second component of the § 10502 test for exemption is stated in the alternative; either the proposed construction project must be of limited scope or the Board must find that regulation of the transaction is not needed to protect shippers from the abuse of market power.

⁹ *See, e.g., DesertXpress*, at 3-4 (granting exemption for construction of interstate passenger line); *Alaska Railroad Corp. – Construction and Operation Exemption – Rail Line between North Pole and Delta Junction, AK*, STB Finance Docket No. 34658, at 5-6 (Jan. 6, 2010); *Arizona Eastern Ry., Inc. – Construction Exemption – In Graham County, AZ*, STB Finance Docket No. 34836, at 3 (June 15, 2009); *Itasca County Regional Rail Authority – Petition for Exemption – Construction of a Line of Railroad in Itasca County, MN*, STB Finance Docket No. 34992, at 3 (Sept. 8, 2008); *Southwest Gulf R.R. Co. – Construction and Operation Exemption – Medina County, TX*, STB Finance Docket No. 34284, at 2 (May 19, 2003); *Missouri Pacific R.R. Co – Construction and Operation Exemption – Harris and Chambers Counties, TX*, 1995 WL 385792 at *4 (June 30, 1995).

See § 10502(a)(2). The All Aboard Florida Line clearly satisfies the latter test. Because Petitioners will not offer transportation service to freight shippers, regulation of the rail line's construction and operation as a safeguard against the potential for market power abuse is unwarranted. See *DesertXpress* at 4 (finding no market power abuse concerns for construction of new passenger line). If anything, the proposed project will enhance competitive transportation options for passengers traveling between Orlando and Miami.¹⁰ Because regulation is not needed to protect shippers from the abuse of market power, the Board need not determine whether the transaction is limited in scope.¹¹

* * *

In conclusion, the All Aboard Florida Line will greatly enhance the transportation options available to Floridians and the millions of annual visitors to the Sunshine State. An exemption from the detailed application procedures of § 10901 will advance the national Rail Transportation Policy and pose no threat of market power abuse. In these circumstances, an exemption from prior approval requirements is plainly warranted. See *DesertXpress* at 3-4.

C. If the Board Grants the Motion to Dismiss, Environmental Analysis Would Not Be Warranted, And If The Board Concludes that Prior Approval of the AAF Project Is Required, It May Join FRA's Environmental Review as a Coordinating Agency.

If the Board grants Petitioners' Motion to Dismiss and concludes that it lacks jurisdiction over the proposed construction and operation of the All Aboard Florida Line, it will not be

¹⁰ See *DesertXpress* at 3 (approving exemption for new passenger line that would "provid[e] additional transportation options"); *Southwest Gulf R.R. Co.* at 3 (concluding that "the proposed transaction will enhance competition by providing . . . a rail transportation option to go along with existing motor carrier options").

¹¹ See, e.g., *DesertXpress* at 4 n.5 ("Given our finding under 49 U.S.C. § 10502(a)(2)(B) regarding the probable effect of the proposed Line on market power, we need not determine under 49 U.S.C. § 10502(a)(2)(A) whether the transaction is limited in scope."); *Missouri Pacific R.R. Co.* at *4 ("The transaction appears to be of limited scope . . . but we need not make that finding here because regulation is not necessary to protect shippers from market power abuse.").

required to conduct any environmental analysis, because a finding of no jurisdiction is not a “major Federal action” under NEPA.¹² Further, even if the Board denies Petitioners’ Motion to Dismiss and concludes that STB approval or exemption of the All Aboard Florida Line is necessary, the Board should join the ongoing environmental review process that the FRA has instituted as a coordinating agency (rather than conducting a second environmental review). The Board has previously cooperated with FRA (with FRA as the lead agency) in reviewing the environmental impacts of proposed passenger rail construction projects, and it should take a similar approach here. *See, e.g., DesertXpress* at 4 n.6 (stating that FRA was lead agency in environmental review “because it has some jurisdiction and expertise related to high-speed train operations and railroad safety.”)

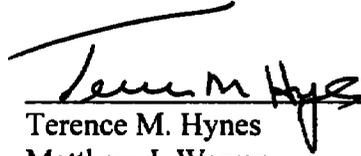
CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Board grant their Motion to Dismiss this Petition and conclude that the proposed construction and operation of the All Aboard Florida Line does not require prior approval under, or exemption from, § 10901. Further, if the Board denies the Motion to Dismiss, Petitioners respectfully request that the Board grant this Petition for Exemption to authorize Petitioners to construct and operate the All Aboard Florida Line without requiring a formal application pursuant to 49 U.S.C. § 10901 by finding that (1) those procedures are not necessary to carry out the rail transportation policy of 49 U.S.C.

¹² *See* 49 C.F.R. § 1105.5(b) (“A finding that a service or transaction is not within the STB’s jurisdiction does not require an environmental analysis under the National Environmental Policy Act or historic review under the National Historic Preservation Act.”).

§ 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terence M. Hynes", is written over a horizontal line.

Terence M. Hynes
Matthew J. Warren
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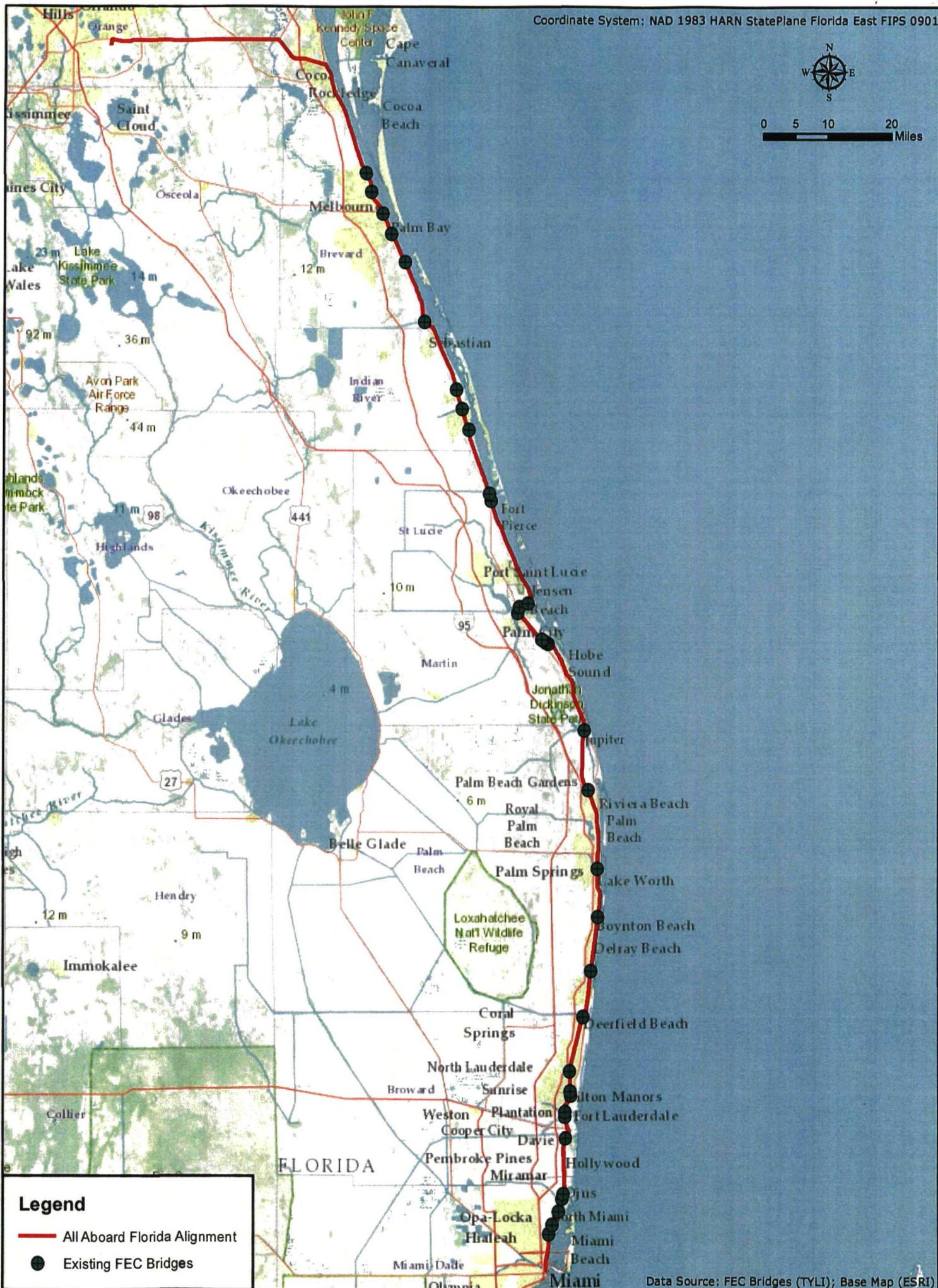
*Attorneys for All Aboard Florida – Operations LLC
and All Aboard Florida – Stations LLC*

Dated: October 5, 2012

EXHIBIT 1



0 5 10 20 Miles



Legend

- All Aboard Florida Alignment
- Existing FEC Bridges

REININGER VERIFIED STATEMENT

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35680

**ALL ABOARD FLORIDA – OPERATIONS LLC & ALL ABOARD FLORIDA –
STATIONS LLC – AUTHORITY TO CONSTRUCT AND OPERATE –
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 – PASSENGER RAIL LINE
BETWEEN MIAMI, FL AND ORLANDO, FL**

VERIFIED STATEMENT OF P. MICHAEL REININGER

My name is P. Michael Reininger, and I am Executive Vice President of All Aboard Florida – Operations LLC (“AAF-O”) and All Aboard Florida – Stations LLC (“AAF-S”). I am submitting this Verified Statement in support of the Petition for Exemption filed by AAF-O and AAF-S (collectively, “Petitioners”) to petition the Surface Transportation Board (“Board”) for an exemption from the prior approval requirements of 49 U.S.C. § 10901 for Petitioners to construct and operate a 230-mile intercity passenger railroad that will connect Orlando, Florida and Miami, Florida, with intermediate stations in Fort Lauderdale and West Palm Beach, Florida (the “All Aboard Florida Line”). The All Aboard Florida Line will provide an important new transportation option to Floridians and visitors to Florida. This Verified Statement also supports the Motion to Dismiss that is being filed by Petitioners, for while the All Aboard Florida Line accords with the national strategy to promote passenger rail, at the same time it is an entirely intrastate project that will not operate as part of the national rail network.

I. Background

I am an architect with nearly 30 years of new business development, master planning and brand management expertise. For instance, I acted as Master Developer for the Denver Union

Station development project, an expansive project that is expected to create one of the country's largest multimodal transit hubs and that involves the redevelopment of 30 acres of downtown Denver real estate and four million square feet of mixed-use space surrounding the historic station. My experience with master planning and brand development also includes a 12-year tenure with subsidiaries of The Walt Disney Company. In that role, I planned 30,000 acres of Florida land assets; developed Walt Disney World's first moderately priced hotel products; initiated the Disney Vacation Club business line; oversaw the construction and opening of resorts and related facilities for Disneyland Paris; and custom-designed a dedicated cruise terminal facility at Port Canaveral in Florida for Disney Cruise Line. My other professional experience includes serving as executive vice president and chief development officer for AECOM, a global provider of professional technical and management support services; acting as executive vice president of Design, Development & Construction for MGM Mirage Hospitality; and serving as senior vice president of Creative Services & Corporate Marketing for the St. Joe Company in Jacksonville – one of Florida's largest real estate development companies and private land owners with corporate roots dating back to the Apalachicola Northern Railroad.

I hold a Bachelor of Architecture, Design Specialization from Texas Tech University, and executive certifications in resort and hotel master planning, financial engineering and business management from Harvard University School of Design, Harvard Business School, and Wharton School of the University of Pennsylvania.

II. The All Aboard Florida Line

The All Aboard Florida Line will operate primarily on tracks to be constructed on an existing right-of-way along the east coast of Florida (the "FEC Corridor") that is owned by Florida East Coast Railway, L.L.C. ("FECR"). The All Aboard Florida Line will offer frequent, regularly scheduled trains traveling daily with amenities such as meal service and Wi-Fi that will

make the travel time productive for passengers. This convenient, fast, dependable transportation option will fulfill an important public need for intercity passenger transportation in Florida.

AAF-O will construct and operate on the new passenger line; AAF-S will be responsible for developing and managing passenger stations to be constructed along the route. Both AAF-O and AAF-S are wholly owned subsidiaries of Florida East Coast Industries, Inc. ("FECI"). FECI and FECR are owned by equity funds that are controlled by Fortress Investment Group LLC and its affiliates.

AAF-O currently holds an easement to construct and provide passenger service along the FEC Corridor. Approximately 200 miles of the All Aboard Florida Line – the segment between Miami and Cocoa – will be built within the FEC Corridor, alongside FECR's existing tracks. Rights to any additional land needed for the remainder of the All Aboard Florida Line would be obtained through (1) the acquisition of minor segments of land where required to optimize travel time; and (2) for the east-west segment of the All Aboard Florida Line connecting Cocoa and Orlando, through the negotiation of leases and/or other rights to use certain rights-of-way owned by the Florida Department of Transportation ("FDOT") and the Orlando Orange County Expressway Authority ("OOCEA").

The FEC Corridor originally consisted of double-track rail that supported both freight and passenger service. FECR ceased passenger operations in 1968. Much of the double-track rail has been removed to balance railroad service needs with capacity and operating and maintenance costs, but the railroad subgrade, embankments and track bed still exist in most places along the system. Existing right-of-way widths are typically at least 100 feet throughout the FEC Corridor, and the system was built and maintained to FRA Class IV track standards, permitting 60 mph freight and 79 mph passenger operations.

Using this existing rail corridor for the majority of the All Aboard Florida Line significantly limits environmental impacts, because the construction of passenger tracks will primarily take place within an existing 100-foot-wide right-of-way that has been used continuously for rail transportation for over a century. Adding and replacing tracks within an existing corridor requires less construction than a “green-field” project, thereby resulting in minimal disruption to the environment and local communities. Construction of a rail line on a new corridor typically requires substantial earthwork to prepare the roadbed, including excavation, grading, and clearing and grubbing of vegetation. Conversely, installing or restoring track on an existing rail right-of-way requires less earthwork and does not implicate water, species, or other more typical environmental impacts. Maintenance of traffic is also minimized when working within an existing transportation corridor. Further, because the FEC Corridor passes through the hearts of Miami, Fort Lauderdale, and West Palm Beach, the construction of a passenger line within this corridor allows passenger stations to be optimally located within metropolitan centers.

The east-west segment of the All Aboard Florida Line connecting Cocoa and Orlando will require access to additional right-of-way that is not currently controlled by Petitioners. To that end, Petitioners will submit a response to the State of Florida Department of Transportation Request For Proposals for Leasing of FDOT and OOCEA Rights of Way for Intercity Passenger Rail System issued on October 3, 2012.¹ Petitioners will propose a structure whereby they will obtain access to the rights-of-way owned by FDOT and OOCEA for use in constructing and operating the Cocoa-to-Orlando segment of the All Aboard Florida Line. When constructed, Petitioners plan to use the Cocoa – Orlando segment exclusively for passenger operations.

¹ See http://www.dot.state.fl.us/procurement/Lease_Of_ROW_Adv.shtm.

The All Aboard Florida Line would be a stand-alone intrastate passenger rail system that will not be part of the national rail network. The All Aboard Florida Line will not connect with the lines of Amtrak or any other interstate passenger rail service provider. Rather, Petitioners will operate exclusively intrastate passenger trains, and the transportation services that Petitioners offer will be passenger transportation between points in Florida. Petitioners have no current plans to provide through ticketing with Amtrak or any other interstate passenger operator for transportation beyond Florida. While the All Aboard Florida Line's tracks may physically cross over, or connect with, the adjacent tracks on the FECR freight corridor, Petitioners will not participate in any intrastate or interstate freight movements. Further, the All Aboard Florida Line's tracks will not connect with the tracks of any freight railroad other than FECR.

The proposed operation of the All Aboard Florida Line contemplates the use of both tracks of the double-track railroad for freight and passenger service. One new dispatch district controlled by FECR is planned between Miami and West Palm Beach for the unified control of the tracks for both freight and passenger services. FECR dispatchers will direct freight trains on the most expeditious route to keep them moving and on-time, while allowing for the faster passenger trains to continue to operate at their higher speed and with few, if any, diverging moves en route. The faster passenger trains will generally be routed on the tangent track with the fewest diverging moves, and freight trains will be routed to the adjacent track, clearing the way for the passenger trains, while keeping the freight trains moving and on time.

AAF-O contemplates entering into an agreement with FECR pursuant to which AAF-O would obtain the right to operate passenger trains over portions of FECR's existing tracks, and FECR would gain the right to operate freight trains over the newly-constructed AAF-O tracks. As detailed above, such an arrangement would enhance the efficiency of both passenger and

freight service offered by AAF-O and FECR, respectively. To the extent required, STB authorization or exemption would be sought for those future arrangements prior to implementing them.

Petitioners have announced a goal of having the All Aboard Florida Line operational by January 1, 2015. The new intercity passenger rail system would provide frequent service (consisting of approximately 16-19 daily roundtrip trains that will be approximately 900 feet long). This schedule would allow hourly train service in each direction during peak periods. Trains will operate at speeds up to 79 mph between Miami and West Palm Beach and up to 110 mph on the newly-constructed passenger tracks between West Palm Beach and Orlando. Petitioners expect that the new passenger service will be capable of transporting passengers between Orlando and Miami in approximately three hours.

The All Aboard Florida Line will be privately owned, maintained and operated. Petitioners are not seeking any public operating subsidies for the project. However, Petitioners are exploring the possibility of obtaining financing for parts of the project and, as part of those efforts, Petitioners are currently in discussions with the Federal Railroad Administration (“FRA”) regarding the possibility of obtaining financing for part of the construction under FRA’s Railroad Rehabilitation and Improvement Financing (“RRIF”) program. As part of those discussions, Petitioners are working with FRA to complete an Environmental Assessment (“EA”) and Section 4(f) Statement for a phase of the All Aboard Florida Line with independent utility.

III. The All Aboard Florida Line Serves An Important Public Need.

The All Aboard Florida Line offers a private-sector solution to the longstanding need for viable intercity passenger rail service in Florida. FDOT has highlighted the need for new infrastructure to address rising highway congestion in Florida and has identified intercity

passenger rail as a preferred approach to solving that problem. FDOT developed a vision plan for intercity passenger rail, which projects that intercity travel within the state will grow from slightly more than 100 million trips in 2006 to nearly 200 million trips by 2020, and 320 million trips by 2040.² This increase will exacerbate existing transportation problems and require development of significant new infrastructure to meet the needs of the public. In a 2009 report FDOT reaffirmed that congestion on Florida's highways may be mitigated by a passenger rail alternative, which would also serve to increase the mobility of tourists, business travelers and residents.³ The rail system envisioned by Petitioners will remove more than three million cars from Florida's roadways annually, mitigating traffic congestion and reducing carbon emissions.

In addition to connecting Southeast Florida's large metropolitan areas, the All Aboard Florida Line will generate substantial economic opportunities for Floridians. For example, it is expected that project construction will create more than 6,000 new jobs for Floridians. Upon completion of construction, AAF-O rail operations are also projected to create another 1,000 permanent jobs, and even more employment opportunities from expected transit-oriented development around the rail stations. At the same time, the taxpayers of Florida will enjoy savings from reduced highway maintenance costs because there will be fewer cars on the road, and the state as a whole will benefit from reduced congestion and less pollution and greenhouse gases.

² Florida Department of Transportation, Florida Intercity Passenger Rail "Vision Plan" (August 2006), *available at* <http://www.dot.state.fl.us/rail/Publications/Plans/06VisionPlan/ExecReportFinal.pdf>.

³ Florida Department of Transportation, *2009 Florida Rail System Plan: Policy Element* (March 2009), *available at* <http://www.dot.state.fl.us/rail/PlanDevel/Documents/2009PolicyElementoftheRailSystemPlan-webfinal.pdf>.

IV. The All Aboard Florida Line Will Benefit The Environment.

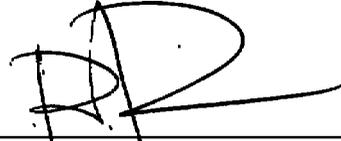
The All Aboard Florida Line is a clear net benefit to Florida's economy, environment, and residents. The creation of an intercity passenger rail option will give Florida's businesses and travelers an environmentally friendly alternative to travel via the state's congested highways. Because most of the All Aboard Florida Line will be constructed on the existing FEC Corridor, the project can be developed with minimal environmental and community impacts. In essence, Petitioners' new project simply represents the restoration of passenger service over a right of way that was originally constructed as a passenger railroad linking the communities on Florida's east coast. Because the new passenger tracks will be constructed within an existing corridor that is in use and has historically seen heavy freight traffic, Petitioners will be able to develop a new passenger service in a manner that will not significantly impact ecologically sensitive areas or wetlands; levels of noise, vibration, or pollutants; or historic resources. Moreover, any potential adverse impacts are far outweighed by the environmental, health, and public policy benefits of developing an intercity passenger rail option in one of the most congested areas of the country.

In connection with a potential RRIF loan application to FRA for a phase of the All Aboard Florida Line that would have independent utility, Petitioners have been working with FRA to prepare an EA for the All Aboard Florida Line. Petitioners have submitted extensive environmental documentation to FRA and have had several discussions with FRA staff about the environmental benefits and impacts of the project. It is anticipated that FRA will issue an EA in the very near future and well before the end of this year.

VERIFICATION

I, P. Michael Reininger, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 5th day of October, 2012.

A handwritten signature in black ink, consisting of a stylized 'P' and 'M' followed by a horizontal line extending to the right.

P. Michael Reininger