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SERVICE DATE – JANUARY 13, 2011

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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35446]

City of Temple, Tex.—Acquisition Exemption—Georgetown Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice instituting proceeding; request for comments.

SUMMARY: On December 15, 2010, the City of Temple, Tex. (Temple), a noncarrier, filed a petition under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10901 to acquire from the Georgetown Railroad Company (Georgetown) an approximately 6.277-mile line of railroad, between milepost 0.0, near Belton, and milepost 6.277, at Smith, in Bell County, Tex. (the line), and the trackage rights granted to Georgetown to operate over the line.¹ In a related transaction, Temple & Central Texas Railway, Inc. (TCTR), a Class III carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to operate over the line. That notice was served and published in the Federal Register on December 10, 2010 (75 Fed. Reg. 77,044). Temple & Central Tex. Ry.—Operation Exemption—City of Temple, Tex., FD 35447 (STB served Dec. 10, 2010). The Board seeks comments from interested persons on Temple's request to acquire the line.

¹ Temple has also concurrently filed a motion for protective order pursuant to 49 C.F.R. § 1104.14(b) to allow Temple to file the unredacted Purchase and Sale Agreement under seal. That motion will be addressed in a separate decision.

DATES: Written comments must be filed with the Board by February 2, 2011. Replies must be filed by February 9, 2011.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. FD 35446, 395 E Street, S.W., Washington, DC 20423-0001.

In addition, send one copy of any comments to Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

FOR FURTHER INFORMATION CONTACT: Julia Farr at 202-245-0359. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On December 15, 2010, Temple filed a petition under 49 U.S.C. § 10502 for exemption from the provisions of 49 U.S.C. § 10901 to acquire the line. Previously Temple had filed a notice of exemption to acquire and operate over the line.² Temple stated in that notice that the purpose of the acquisition was to construct a pipeline underneath the right-of-way and subsequently convert the line into a trail under the National Trails System Act, 16 U.S.C. § 1247(d). The Director of the Office of Proceedings stated in the April 23 notice that the Board has found that acquiring a line for the purpose of abandoning rather than operating over it constitutes a misuse of Board procedures. Accordingly, Temple's notice was rejected without

² City of Temple, Tex.—Acquisition and Operation Exemption—Georgetown R.R. Co., FD 35369 (STB served Apr. 23, 2010) (April 23 notice).

prejudice. Subsequently, Temple entered into an agreement with TCTR, which operates other railroad lines owned by Temple, to operate over the line. Temple states that its agreement with TCTR requires that TCTR solicit business over the line and to provide common carrier service for remunerative business. Temple states that in the event TCTR is unable to provide service over the line, Temple will assume the residual common carrier obligation to provide service. Temple requests expedited action on its petition.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. § 10502(b).

Decided: January 10, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.