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September 4, 2015

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VIA CERTIFIED MAIL

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

**Re: Oakland Global Rail Enterprise, LLC – Operating Exemption – Line
Railroad Owned by the City of Oakland, California, Finance Docket
No. 35953**

Dear Ms. Brown:

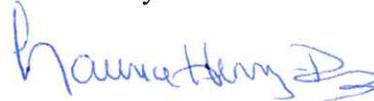
Please find enclosed an original and ten (10) copies of a letter from the Port of Oakland petitioning the Surface Transportation Board for a housekeeping stay in the above-referenced matter.

Please do not hesitate to contact me should you have any questions regarding this matter.

Very truly yours,

DANNY WAN
Port Attorney

By


DONNELL W. CHOY
Deputy Port Attorney

Enclosures



J. Christopher Lytle
Executive Director

September 3, 2015

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, D.C. 20423-0001

Re: *Petition for Housekeeping Stay: Oakland Global Rail Enterprise, LLC – Operating Exemption – Line of Railroad Owned by the City of Oakland, California, Finance Docket No. 35953*

Dear Ms. Brown:

The Port of Oakland (the "Port") hereby petitions the Surface Transportation Board (the "Board") for a housekeeping stay of the Verified Notice of Exemption of Oakland Global Rail Enterprise, LLC ("OGRE") pursuant to 49 C.F.R. §1150.31 filed with the Surface Transportation Board on August 12, 2015, amended on August 26, 2015, and further modified on August 27, 2015 (collectively, the "Notice"). The Port is concerned that: (i) the Notice, even as amended and modified, still refers to OGRE operating on Port property, (ii) the Notice is inaccurate regarding OGRE's purported rights to operate on the Port Rail Terminal, (iii) railroad improvements on the City of Oakland (the "City") portion of the property have not yet been constructed by OGRE'S affiliate, (iv) OGRE does not have rail access to either the City's property or any of the City's railroad improvements until certain critical lease, access and operating agreements have been finalized amongst the City, Port, and OGRE (v) the Exhibit to the Notice is inaccurate in that it describes OGRE as having operating rights on 60,670 feet of Port Track, when in fact it does not have such rights; and (vi) when accurately described, OGRE is seeking operating authority on an "island" of landlocked track on City property, disconnected from the interstate railroad system and not sufficient for OGRE to be a rail common carrier.

The Port of Oakland is an autonomous department of the City of Oakland created in 1927 pursuant to the Charter of the City of Oakland (the "Charter"). Article VII of the Charter vests in the Board of Port Commissioners (the Port's governing body) the complete and exclusive power to have control and jurisdiction of the Port and vests all legal title, operational control and policy decision-making in the Board of Port Commissioners. For purposes of the matters addressed in the Notice, the "Port" is a separate and distinct legal entity from the "City" for both the ownership of the relevant land and rail facilities, and the operations of such facilities.

Portions of the tracks that OGRE represents are owned or constructed by the City in Section e.3 and shown in green on Exhibit A of OGRE's Amended Verified Notice of Exemption filed on August 26, 2015 are located within the Port Area; therefore, neither the City nor OGRE has ownership or control of referenced tracks in the Port area. Additionally, the "Port Rail Terminal" (as referenced in the letter dated August 10, 2015 from John Monetta of the City to Mark McClure of OGRE and submitted by OGRE in support of its Notice) is entirely within the Port Area and is owned and being developed by the Port. Additionally, the Port has developed over

700 acres of maritime container terminals within the Port Area, and one of the primary purposes of the Port Rail Terminal is to enhance the business at the Port's maritime container terminals. The Port requests this housekeeping stay of OGRE's Notice for the reasons stated in this letter. The Notice is still inaccurate as to geographic scope. The August 27 "modification" letter corrected the reference in the first sentence of Section c. on page 2 of the amended notice of exemption, but the summary of the proposed transaction in section e.3 still says that the relevant track "is or will be located within the Port of Oakland." In addition, the Caption Summary says the notice of exemption is to "operate over railroad tracks that are owned or are being constructed by the City of Oakland, California within the Port of Oakland." As the modification letter itself acknowledges, references to track on Port of Oakland property are not accurate. . The Notice states that the Applicant has entered into an agreement with the City by which it will operate as a common carrier by rail over approximately 32,690 feet of City tracks shown in green on Exhibit A. Exhibit A shows the City tracks extending onto a portion of Port land. However, the City and the Port have not yet determined whether those portions of the "City tracks" on Port lands will be operated and maintained by the City or by the Port, so it is not accurate to state that OGRE has rights to operate on these tracks by virtue of an agreement with the City.

The Notice is inaccurate regarding OGRE's purported rights to operate on the Port Rail Terminal. In support of their Notice, OGRE submitted a letter from John Monetta of the City stating that OGRE has rights through the City to access and operate on the Port Rail Terminal. This is not accurate. OGRE has no such rights, and the City and the Port have not reached an agreement regarding OGRE's operations on the Port Rail Terminal. Until the City and the Port have agreed upon all matters related to "City tracks" on Port land and the City's rights of access and operation on the Port Rail Terminal, it is inaccurate to state that OGRE has any rights of access or operation of the Port Rail Terminal or on Port land.

City Rail Improvements. In 2012, the City entered into (i) a Leasehold Disposition and Development Agreement ("LDDA") with Prologis CCIG Oakland Global, LLC ("City's Developer") and (ii) a Property Management Agreement ("PMA") with California Capital & Investment Group, Inc. ("CCIG"), one of the members of the City's Developer. Under the LDDA, the City will ground lease to a CCIG entity certain properties on City's lands known as the West Gateway Development Property (the "WGD Property"), which includes approximately 8.45 acres of lands (some of which the City holds in fee and some of which the City holds easement interests in) that the City tracks will be developed on. OGRE has advised the Port that the CCIG ground lessee of the WGD Property will sublease the 8.45 acres to OGRE (itself a CCIG entity as defined in the LDDA) to develop the City tracks. Neither the ground lease of the WGD Property nor a sublease to OGRE of the 8.45 acres has occurred as of the date of this writing, and the City tracks have not been developed yet.

When accurately described, OGRE is seeking operating authority on an "island" of landlocked track on City property, disconnected from the interstate railroad system. Once all corrections are made, it becomes clear that OGRE is seeking operating authority on City property only, with no connection to the general railroad system and therefore without what it would need to hold itself out to the public as willing and able to provide interstate rail service to the public and thus cannot be a rail common carrier subject to STB jurisdiction.

OGRE does not have a Right to Operate on the Port Tracks listed in the Notice. Exhibit A to the Notice lists 60,670 feet of Port tracks as "OGRE Operated Track". This is incorrect; OGRE and the Port have not entered into an agreement allowing OGRE access or operating rights on

60,670 feet of Port owned tracks. While the parties have engaged in discussions of a possible agreement, the terms have not been completed and no such document has been approved by the Port's governing board. As a result, the Notice is factually incorrect and inaccurate as submitted and should be withdrawn.

OGRE's Amended Verified Notice of Exemption still contains inaccurate and ambiguous information. Although OGRE's August 27 modification corrects the first sentence in Section c to its Amended Notice of Exemption, the preamble to OGRE's Amended Notice of Exemption continues to state that "OGRE may operate over a line of railroad owned by the City of Oakland, California ("City") within the **port industrial facility**..." (emphasis added), and the summary to the Verified Notice continues to reference that the tracks are within the Port of Oakland. Additionally, the amended notice of exemption indicates that all shippers are being notified of the transaction and OGRE's intention to provide the described service. Neither the Port of Oakland nor the STB have been informed regarding whether erroneous notices were provided to shippers and whether those notices have been fully corrected. It is unclear whether all shippers have been notified of the modifications made to the initial Notice of Exemption, particularly the fact that without rail access across Port lands, shippers to or from the City's property will not have rail service outside the City's property. In short, the City's property will be an island with rail service only within that island.

For the reasons stated hereinabove, the Port respectfully requests that the Board stay any further consideration of OGRE's Notice of Exemption until all necessary agreements have fully agreed upon and finalized.

Very truly yours,



J. Christopher Lytle
Executive Director

cc: Port Board Commissioners
Danny Wan, Port Attorney
John Driscoll, Maritime Director

1 *Re: Oakland Global Rail Enterprise, LLC – Operating Exemption –*
2 *Lines of Railroad Owned by the City of Oakland, CA., Finance Docket No. 35953*

3 **PROOF OF SERVICE**
4 [C.C.P. §1013, F.R.C.P. Rule 5]

5 I, the undersigned, state:

6 I am a citizen of the United States. My business address is 530 Water Street, Oakland, California
7 94607. I am employed in the City of Oakland in the County of Alameda. I am over the age of eighteen
8 years. On the date set forth below, I served the foregoing documents described as follows:

9 **PORT OF OAKLAND'S PETITION FOR HOUSEKEEPING STAY**

10 on the following person(s) in this action by the method(s) identified below:

11 **Counsel for Oakland Global Rail Enterprise,**
12 **LLC**
13 Edward Greenberg
14 GKG Law, P.C.
15 1055 Thomas Jefferson Street, N.W., Ste. 500
16 Washington, DC 20007

17 **Counsel for District Lodge 19 of The**
18 **International Assoc. of Machinists and**
19 **Aerospace Workers, Afl-Cio**
20 Carmen R. Parcelli
21 Guerrieri, Clayman, Bartos & Parcelli, P.C.
22 1900 M Street, N.W. Suite 700
23 Washington, D.C. 20036

24 BY FIRST CLASS MAIL – I am readily familiar with my firm's practice for collection and
25 processing of correspondence for mailing with the United States Postal Service, to wit, that
26 correspondence will be deposited with the United States Postal Service this same day in the
27 ordinary course of business. I sealed said envelope and placed it for collection and mailing this
28 date, following ordinary business practices.

BY PERSONAL SERVICE – Following ordinary business practices, I caused to be served, by
hand delivery, such envelope(s) by hand this date to the offices of the addressee(s).

BY OVERNIGHT MAIL – I caused such envelope to be delivered by a commercial carrier service
for overnight delivery to the office(s) of the addressee(s).

BY EMAIL – I caused said document to be transmitted by email to the address(es) noted above.

BY FACSIMILE – I caused said document to be transmitted by facsimile to the fax number noted
above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true
and correct and that this declaration was executed this date in Oakland, California.

Dated: September 4, 2015


LAURICE HENRY-ROSS