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November 17, 2015

239568

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

ENTERED  
Office of Proceedings  
November 17, 2015  
Part of  
Public Record

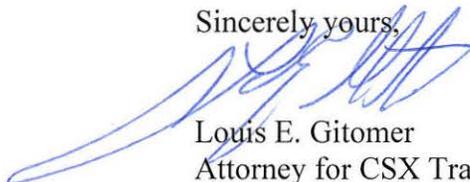
Re: **Docket No. AB-55 (Sub-No. 745X), CSX Transportation, Inc.—Abandonment  
Exemption—in Floyd County, KY**

Dear Ms. Brown,

Enclosed is the reply of CSX Transportation, Inc. to the letters filed on November 12,  
2015 and November 16, 2015 by Floyd County, KY.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer  
Attorney for CSX Transportation, Inc.

Enclosure

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. AB-55 (Sub-No. 745X)

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CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—  
IN FLOYD COUNTY, KY

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REPLY TO STAY/RECONSIDERATION REQUEST OF FLOYD COUNTY

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Attorneys for: CSX TRANSPORTATION,  
INC.

Dated: November 17, 2015

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. AB-55 (Sub-No. 745X)

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CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—  
IN FLOYD COUNTY, KY

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REPLY TO STAY/RECONSIDERATION REQUEST OF FLOYD COUNTY

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CSX Transportation, Inc. (“CSXT”) responds to two documents filed by Floyd County, KY, one on November 12, 2015 addressed to Jo Ann Burroughs of CSXT and the second filed on November 16, 2015 addressed to Cynthia Brown. Other than the person the letters are addressed to, and a certificate of service attached to the November 16 filing, the documents appear to be the same. Since the letters are substantively the same, CSXT will refer to them as the Floyd County Letter. CSXT respectfully requests the Surface Transportation Board (the “Board”) to deny the requests in the Floyd County Letter.

The Floyd County Letter requests “re-consideration of the proposed abandonment,” which CSXT will respond to as a Petition for Reconsideration, and “**delaying** the abandonment of this corridor pending a full vetting of these economic opportunities” (emphasis added), which CSXT will treat as a Petition to Stay. The Floyd County Letter refers to CSXT’s proposed abandonment of an approximately 11.4-mile railroad line, between Milepost COQ 0.0, near Prestonsburg, and Milepost COQ 10.1, near David, in Floyd County, KY (the “Line”). Floyd County’s sole basis for the reconsideration and stay is that it needs an indeterminant amount of time to engage in

economic development efforts along the Line. In view of Floyd County's recently commenced effort at economic development, based on CSXT's economic development efforts, CSXT believes that Floyd County is seeking to delay abandonment at least three to five years.

**FLOYD COUNTY HAS NOT MET THE CRITERIA FOR RECONSIDERATION.**

Under 49 C.F.R. § 1011.7(a)(2)(x)(D), the Board has delegated to the Director of the Office of Proceedings the authority to determine whether to issue notices of exemption from 49 U.S.C. § 10903 pursuant to 49 U.S.C. § 10502 and the implementing regulations at 49 C.F.R. § 1152.50. Under 49 C.F.R. § 1011.2(a)(7), the Board considers appeals of initial decisions issued by the Director under the authority delegated by 49 C.F.R. § 1011.7.<sup>1</sup>

Floyd County does not question the propriety of the Notice of Exemption filed by CSXT and does not question the accuracy of the Notice of Exemption served by the Director of the Office of Proceedings (the "Director") on November 2, 2015. CSXT has met and complied with all of the requirements of 49 CFR 1152.50.

Floyd County asks that CSXT's abandonment be delayed so that Floyd County can engage in economic development efforts along the Line. Floyd County does not provide any additional detail. There is no information in the Floyd County Letter concerning the type of business that might locate, the potential volume of traffic, the commodities involved, or any other information. Floyd County does not even indicate how long these development efforts will take. Floyd County merely states that it is "currently in discussions."

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<sup>1</sup> *Delaware and Hudson Railway Company, Inc.—Discontinuance of Trackage Rights Exemption—in Broome County, N.Y.; Middlesex, Essex, Union, Somerset, Hunterdon, and Warren Counties, N.J.; Cumberland, Chester, Luzerne, Perry, York, Lancaster, Northampton, Lehigh, Carbon, Berks, Montgomery, Northumberland, Dauphin, Lebanon, and Philadelphia Counties, Pa.; Cecil, Harford, Baltimore, Anne Arundel, and Prince George's Counties, and Baltimore City, Md.; The District of Columbia; and Arlington County, and The City of Alexandria, Va., Docket No. AB 156 (Sub-No. 27X) slip op. at 7 (served July 10, 2015) (the "D&H Discontinuance").*

The Line has not been used for rail service for over two years. Indeed, as the Director noted in the Notice of Exemption served on November 2, 2015 at 1, “The Board previously authorized CSXT to abandon the Line in 2004.” Now Floyd County claims that the Line may be of value for economic development. But Floyd County did not file a notice of an offer of financial assistance. Nor did any other entity now requiring rail service in Floyd County or considering using rail service in Floyd County file an offer of financial assistance. Instead, Floyd County asks the Board to require CSXT to continue to incur maintenance costs and taxes, to forego a return on investment in an 11.4 mile railroad line, and to continue to expose itself to liability on the Line, so that Floyd County can engage in an economic development initiative that should have begun years ago. Not only is there no assurance from Floyd County that its efforts are about to bear fruit in the near future, but there is no assurance that CSXT will be able to recover the expenses and lost return in the future.

Floyd County has not shown that there are changed circumstances, material error, or new evidence justifying reconsideration of the Notice of Exemption. Floyd County has also failed to address the factors at 49 U.S.C. §10101 that justify revoking a Notice of Exemption. CSXT requests the Board to deny reconsideration and allow the Notice of Exemption to become effective.

**FLOYD COUNTY HAS NOT MET THE CRITERIA FOR A STAY.**

Floyd County has not even addressed the Board’s stay criteria, much less met the burden. Moreover, Floyd County does not question the fact that there has been no rail service over the Line since 2013.

In ruling on a petition for a stay, the Board considers: (1) whether the party seeking the stay has made a strong showing that it is likely to prevail on the

merits; (2) whether the party seeking the stay will suffer irreparable harm in the absence of a stay; (3) whether other interested parties will be substantially harmed by a stay; and (4) the public interest in granting or denying the stay. *See Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958).<sup>2</sup>

**Floyd County has made no showing that it will prevail on the merits.** Floyd County does not argue that it will prevail on the merits. It does not even address the merits.

Floyd County does not even project any volume of future traffic. Currently there is no traffic on the Line. “Future traffic trends are likely to be a continuation of past ones – an inference we believe is justified unless and until affirmative evidence to the contrary is introduced.” *Illinois Central Gulf R. Co. – Abandonment*, 363 I.C.C. 93, 102 (1980). Floyd County has not provided any evidence. Not only is there no evidence of future traffic, but “speculation that traffic will increase is not sufficient to justify continued operation of the line.” *Texas and Pacific Railway Company Abandonment*, 360 I.C.C. 31, 32 (1978).

The unsubstantiated hope for future traffic does not demonstrate that Floyd County will prevail on the merits.

**Irreparable Harm.** Floyd County does not present any evidence that it will suffer irreparable harm in the absence of a stay. Because no traffic has moved over the Line in over two years, even if Floyd County had made an irreparable harm claim, it would be speculative at best.<sup>3</sup>

<sup>2</sup> *Delaware and Hudson Railway Company, Inc.—Discontinuance of Trackage Rights Exemption—in Broome County, N.Y.; Middlesex, Essex, Union, Somerset, Hunterdon, and Warren Counties, N.J.; Cumberland, Chester, Luzerne, Perry, York, Lancaster, Northampton, Lehigh, Carbon, Berks, Montgomery, Northumberland, Dauphin, Lebanon, and Philadelphia Counties, Pa.; Cecil, Harford, Baltimore, Anne Arundel, and Prince George's Counties, and Baltimore City, Md.; The District of Columbia; and Arlington County, and The City of Alexandria, Va.*, Docket No. AB 156 (Sub-No. 27X) slip op. at 2 (served August 13, 2015).

<sup>3</sup> *R.J. Corman Railroad Company/Pennsylvania Lines, Inc.—Abandonment Exemption—in Clearfield, Jefferson, and Indiana Counties, PA*, Docket No. AB-491 (Sub-No. 2X), slip op. at 4 (December 11, 2008).

**Other parties would be harmed by a stay.** CSXT and its existing shippers would be harmed by a stay. CSXT would continue to incur costs of maintaining the line and paying taxes. CSXT would be forced to forego a return on the value of the assets left on the ground and would continue to be exposed to liability. In addition to CSXT, its existing customers would be required to cross-subsidize the costs incurred by CSXT in leaving the Line unused for any period of time, most likely three to five years at a minimum.

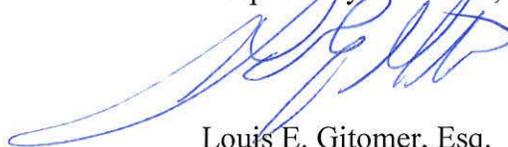
CSXT has agreed to negotiate trail use over the Line with the City of Prestonsburg, KY. See letters filed November 2, 2015 and November 12, 2015. CSXT will keep the right-of-way intact while negotiating for trail use. If there is sufficient future traffic for the Line, it can be reactivated pursuant to 16 U.S.C. §1247(d) and 49 CFR 1152.29.

**The public interest does not favor granting a stay.** Floyd County has not identified a viable public interest for the Board to grant a stay. There is no current harm to the public interest that would require a stay. Any harm is at best speculative into the future. Indeed, if trail negotiations are successful, the right-of-way will remain intact and subject to reactivation as a rail line. Abandonment of the Line by CSXT will not harm the public interest.

CONCLUSION

The Floyd County Letters have not demonstrated that reconsideration of the Director's November 2, 2015 Notice of Exemption is warranted. Nor do the letters support the granting of a stay. CSXT respectfully requests the Board to deny all relief sought by Floyd County.

Respectfully submitted,



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INC.

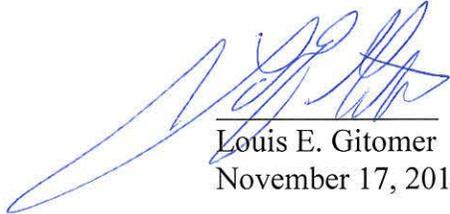
Dated: November 17, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have caused this pleading in Docket No. AB-55 (Sub-No. 745X),  
*CSX Transportation, Inc.—Abandonment Exemption—in Floyd County, KY*, to be served via  
electronic service on November 17, 2015, on the following parties of record:

Benjamin L. Hale  
Judge/Executive of Floyd County  
149 South Central Avenue - Suite 9  
Prestonsburg, KY 41653

Mayor Les Stapleton  
City Of Prestonsburg  
200 North Lake Drive  
Prestonsburg, KY 41653



Louis E. Gitomer  
November 17, 2015