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March 21, 2005

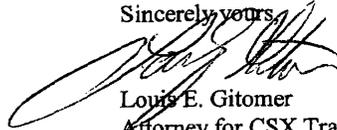
Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, D. C. 20423

RE: Docket No. AB-55 (Sub-No. 568X), *CSX Transportation, Inc.—Abandonment Exemption—in Franklin County, PA*

Dear Secretary Williams:

Enclosed is CSX Transportation, Inc.'s Reply to the Petition of New Franklin Properties, LLC. Thank you for your assistance. If you have any questions, call or email me.

Sincerely yours,



Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (Sub-No. 568X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN FRANKLIN COUNTY, PA

REPLY OF CSX TRANSPORTATION, INC.

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Dated: March 21, 2005

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SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (Sub-No. 568X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN FRANKLIN COUNTY, PA

REPLY OF CSX TRANSPORTATION, INC.

CSX Transportation, Inc. (“CSXT”) replies to the Petition of New Franklin Properties, LLC (“NFP”) filed on March 1, 2005 (the “Petition”). The Petition seeks (1) reconsideration of the decision in the above-entitled proceeding served by the Surface Transportation Board (the “Board”) on July 8, 2004 (the “*July Decision*”); (2) reopening of the decision in the above-entitled proceeding served by the Board on March 9, 1999 (the “*March Decision*”) and (3) a stay of CSXT’s right to exercise abandonment. CSXT opposes all of the relief sought by NFP.

NFP repeats arguments it has previously made, have been fully addressed by CSXT and the Burrough of Chambersburg (“Chambersburg”), have been fully considered by the Board, and have been rejected in the *July Decision*. It is CSXT’s contention that the appropriate time for NFP to have appealed the *July Decision* was by July 18, 2004, not March 1, 2005. CSXT respectfully requests the Board to deny all of the relief sought by NFP.

BACKGROUND

CSXT filed a Petition for Exemption on November 16, 1998 to abandon a 1.9-mile line of railroad known as the Baltimore Service Lane, Lurgan Subdivision, extending between milepost BAV-20.5 at 4th Street and milepost BAV-22.4 at Commerce Street in Chambersburg,

Franklin County, PA (the "Line"). Subject to employee protective conditions, a public use condition, and an interim trail use/rail banking condition, the abandonment exemption was granted. *CSX Transportation, Inc.—Abandonment Exemption—in Franklin County, PA*, STB Docket No. AB-55 (Sub-No. 568X) (STB served March 9, 1999).

There are three line segments. Segment 1 is between 4th Street, valuation station 1083+20, and Main Street, valuation station 1096+20, but does not include the Main Street crossing. Segment 2 is between Main Street, valuation station 1096+20, including the Main Street crossing, and South Street, valuation station 1122+30, not including the South Street crossing. Segment 3 is between South Street, valuation station 1122+30, including the South Street crossing, and Commerce Street, valuation station 1182+72, including the Commerce Street crossing. Only Segment 1 has been put in issue by the Petition.

CSXT agreed to transfer the Line to Chambersburg pursuant to an agreement with the Pennsylvania Department of Transportation (the "PADOT Agreement"). Under the PADOT Agreement, CSXT has abandoned Segment 3, salvaged the track and transferred the property to Chambersburg.¹ CSXT is in the process of finalizing an agreement for Chambersburg to acquire Segments 1 and 2. CSXT will salvage the track and material from Segment 2, and Chambersburg intends to retain the track and material on Segment 1 as reclassified spur track.

Based upon comments and replies filed by NFP, Chambersburg and CSXT, the Board denied the request to file an offer of financial assistance ("OFA") under 49 U.S.C. § 10904 for Segment 1 in the *July Decision*. Pursuant to the *July Decision*, Offerors withdrew the OFA for Segment 2 on August 6, 2004. Since that time, CSXT has been negotiating the sale of Segments

1 and 2 to Chambersburg. Because the negotiations had not been completed, the parties agreed to seek extensions from the Board to permit the completion of negotiations. The Board granted the extension requests in decisions served on July 27, 2004 and January 28, 2005.

RESPONSE TO PETITION

In the *July Decision*, the Board, through the Director of the Office of Proceedings, properly denied NFP's request to file an OFA for Segment 1. NFP now seeks another opportunity to file a late OFA. CSXT continues to oppose the filing of an OFA, now more than six years after the deadline established in the *March Decision*.

NFP is appealing two decisions made by the Board, one served on March 9, 1999, and the other served on July 8, 2004. CSXT contends that neither appeal is timely.

NFP has appealed the *March Decision* under 49 C.F.R. § 1152.25(e)(4). Pursuant to those regulations, NFP must demonstrate material error, new evidence, or substantially changed circumstances. NFP has failed to mention, much less demonstrate material error, new evidence, or substantially changed circumstances.

Instead, NFP relies upon the extensions granted by the Board for CSXT and Chambersburg to conclude their agreement as the basis for the Petition insofar as the *March Decision* is concerned. Such extensions are not unusual and certainly do not justify reopening a six year old decision to permit the filing of an OFA six years late. The OFA provisions under the statute and Board's regulations require expedited action by offerors, as was required by the Board in the *March Decision*. In this proceeding, the Offerors' OFA for Segment 2, which the Offerors withdrew over five years after the OFA was made and agreed upon, substantially contributed to

¹ An offer of financial assistance ("OFA") under 49 U.S.C. § 10904 to acquire Segment 2 was filed on March 12, 1999 by Frederick Armstrong Fox, Frederick A. Fox, Kaye A. Fox, and Karla

the delay in CSXT's disposition of Segment 2. NFP has not justified reopening the *March Decision* to permit it to file an OFA *nunc pro tunc*.

On September 23, 2003, NFP sought to file an OFA to acquire Segment 1, even though the time for filing of an OFA had expired on March 19, 1999. CSXT opposed the filing of the OFA. The *July Decision* by the Director of the Office of Proceedings denied NFP's request to file the OFA for Segment 1. NFP is now seeking to appeal the *July Decision* under 49 C.F.R. § 1117.1 for relief not otherwise covered by the Board's rules. NFP is wrong. The Board's rules do provide for the appeal of the decisions of the Director concerning an OFA at 49 C.F.R. § 1152.25(e)(1)(i). CSXT also contends that NFP has not sought timely review of the *July Decision*.

CSXT and Chambersburg are working out the final details of the agreement to transfer Segments 1 and 2 to Chambersburg from CSXT. Chambersburg intends to convert Segment 2 into a trail and to maintain the rail and track material on Segment 1 to provide continued rail service over it as reclassified spur track. CSXT contends that private negotiations between Chambersburg and NFP are preferable to the reactivation of the OFA process six years after the OFA was required to be filed with the Board. CSXT believes that permitting the use of an OFA six years after it was required to be filed would create a precedent for interminable delays in the abandonment process, contrary to the transportation policy of 49 U.S.C. § 10101.

NFP has not justified the filing of an OFA six years after it was due. NFP has an alternative to the OFA process. NFP can negotiate the use of Segment 1 with Chambersburg. CSXT respectfully requests that the Board deny NFP's Petition to reopen the *March Decision*

M. Fox (the "Offerors")

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and the *July Decision* to permit it to file an OFA *nunc pro tunc* more than six years after the OFA was required to be filed.

NFP HAS NOT JUSTIFIED A STAY

In paragraph 65 of the Petition, NFP “requests the Board to stay CSXT’s right to exercise its abandonment authority for Segment 1, pending the Board’s disposition of this petition.” NFP provides no other justification for a stay.

CSXT contends that there are two reasons for the Board to deny NFP’s stay request. First, the stay request is not timely. Second, the stay request does not address, much less meet the criteria that the Board considers in granting a stay.

Under 49 C.F.R. § 1152.25(e)(7)(iii), a stay request for an abandonment “shall be filed not less than 15 days prior to the effective date of the abandonment authorization.” The *July Decision* became effective on July 15, 2004. NFP’s stay request filed on March 1, 2005 is untimely under the Board’s rules and should be rejected.

Moreover, NFP does not address the appropriate stay criteria. The Board has recently said that:

The standards governing disposition of a petition for stay are: (1) whether petitioners are likely to prevail on the merits; (2) whether petitioners will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. Washington Metropolitan Area Transit Comm’n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). The parties seeking a stay carry the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

Canadian Pacific Railway Company — Trackage Rights Exemption — Norfolk Southern Railway Company, STB Finance Docket No. 34561 (STB served October 27, 2004).

NFP is unlikely to prevail on the merits of the Petition. NFP is repeating arguments, in an untimely manner, previously rejected by the Board.

NFP makes no allegation of harm. Indeed, Chambersburg intends to retain the track in Segment 1 after CSXT has reclassified it as spur or other excepted track under 49 U.S.C. § 10906. In lieu of seeking to inject the Board into negotiations with CSXT under the OFA provisions, NFP will be free to negotiate access to Segment 1 with Chambersburg post abandonment, and will suffer no harm.

A stay would harm CSXT and Chambersburg by artificially delaying the termination of this proceeding. CSXT and Chambersburg requested a further extension of trail use negotiations, but are very close to final agreement and transfer of the property from CSXT to Chambersburg. A stay might further delay this transfer and inject the Board into what should be a private negotiation between NFP and Chambersburg.

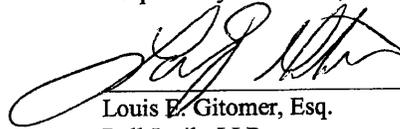
A stay will not be in the public interest. CSXT sought this abandonment at the request of Chambersburg. CSXT and Chambersburg have expended great effort and cost to progress this abandonment. Abandonment will benefit the people of Chambersburg without harming any shippers because of the rerouting that CSXT has arranged. As a proponent of the abandonment, Chambersburg will be harmed by the delay caused by a stay.

CSXT respectfully requests the Board to deny the unjustified stay sought by NFP.

CONCLUSION

CSXT respectfully requests that the Board deny the Petition and stay request.

Respectfully Submitted,



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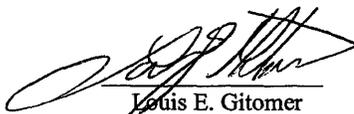
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Attorneys for:
CSX TRANSPORTATION, INC.

Dated: March 21, 2005

CERTIFICATE OF SERVICE

I certify that this day, March 21, 2005, I have served copies of this Reply on all parties of record in this proceeding, by first class mail, postage pre-paid.



Louis E. Gitomer
March 21, 2005