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April 19, 2005

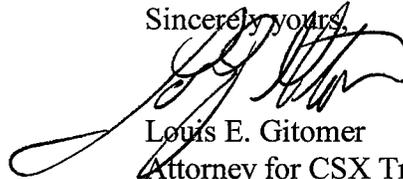
Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, D. C. 20423

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

Dear Secretary Williams:

Enclosed is the efiled Motion to Strike and Reply of CSX Transportation, Inc. to the Petition of New Frankiln Properties, LLC. Thank you for your assistance. If you have any questions, please 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

MOTION TO STRIKE AND REPLY OF CSX TRANSPORTATION, INC.

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INC.

Dated: April 19, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

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

MOTION TO STRIKE AND REPLY OF CSX TRANSPORTATION, INC.

CSX Transportation, Inc. (“CSXT”) files this Motion to Strike and Reply to the Surreply of New Franklin Properties, LLC (“NFP”) filed on March 30, 2005 (the “Surreply”). As was made clear in CSXT’s Reply filed on March 21, 2005 to NFP’s Petition, CSXT opposes NFP’s attempt to reopen this proceeding and file an offer of financial assistance (“OFA”) to acquire Segment 1 of the line of railroad approved for abandonment.

PROCEDURAL MATTER–MOTION TO STRIKE

NFP filed a Petition on March 1, 2005. The Borough of Chambersburg, PA replied on March 16, 2005. CSXT replied on March 21, 2005 (the “March 21 Reply”). NFP then filed the Surreply.

Under 49 C.F.R. § 1104.13(c) a “reply to a reply is not permitted.” The Surreply is nothing more than a reply to a reply. CSXT respectfully requests the Board to reject the Surreply as a “document [that] does not comply with the rules” 49 C.F.R. § 1104.10(a).

NFP argues that CSXT mischaracterized the Petition as an “appeal” and then reiterates the arguments made in the Petition. Regardless of whether NFP’s Petition was a petition for reconsideration of the *July 8 Decision*, a petition to reopen the *March 9 Decision*, or an appeal,

NFP must demonstrate material error, new evidence or substantially changed circumstances. As explained by CSXT in the March 21 Reply, NFP has not met any of the criteria. And regardless of the designation of the Petition, a reply to a reply is not allowed.

CSXT also notes that the Surreply does not contain any information that did not exist at the time the Petition was filed. Indeed, the information concerning NFP and the shippers was known to NFP when it filed its first petition in this proceeding on September 23, 2004. NFP is making cumulative arguments and presenting unverified facts that existed at the time the Petition was filed.

NFP does not seek leave to file the Surreply. NFP does not provide any justification for the filing of the Surreply. In accordance with the Board's rules, CSXT respectfully urges the Board to reject the Surreply.

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) (the "*March Decision*").

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 Surreply.

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 OFA under 49 U.S.C. § 10904 for Segment 1. *CSX Transportation, Inc.—Abandonment Exemption—in Franklin County, PA*, STB Docket No. AB-55 (Sub-No. 568X) (STB served July 8, 2004) (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 SURREPLY

NFP argues that it should be permitted to file an OFA six years after an OFA was required to be filed under the statute and regulations because (1) NFP did not exist at that time,

(2) because since that time a shipper located on Segment 1, and (3) CSXT has not consummated the abandonment. NFP is not proposing to file an OFA a few days late; NFP is asking the Board to create precedent that would permit an OFA to be filed at any time the abandonment of a rail line has not been consummated.

1. The creation of a new entity is not a valid reason to accept a late filed OFA.

NFP contends that because it did not exist at the time the OFA was required to be filed that it was impossible for NFP to file a timely OFA and that the Board should permit it to file an OFA six years late. NFP is wrong. The OFA provisions were adopted with short time frames to “assist shippers who are sincerely interested in improving rail service, while at the same time protecting carriers from protracted legal proceedings which are calculated merely to tediously extend the abandonment process.” H. Rep. No. 96-1430, page 125. This abandonment proceeding has continued for over six years. CSXT is moving to complete its transfer of Segments 1 and 2 to Chambersburg.

The acceptance of NFP’s argument would raise questions as to whether railroads should engage in negotiations for interim trail use/rail banking or other options for selling or leasing a rail line after abandonment outside the OFA process, or after consummation of abandonment as a line reclassified as excepted track under 49 U.S.C. § 10906. Facing the prospect of a forced sale and potential litigation over valuation after the time OFA’s are required to be filed under the OFA statute would certainly chill the interests of CSXT, and probably other railroads, in exploring interim trail use/rail banking or sales outside the OFA process. Instead, railroads could

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 M. Fox (the “Offerors”)

well seek to expeditiously consummate abandonments, reducing the lines available for trail use and extinguishing privately negotiated arrangements to continue rail service.

In addition, NFP's argument is contrary to the specific wording of the OFA statute. "Within four months after an application is filed under section 10903 any person may offer to ... purchase the railroad line" 49 U.S.C. § 10904(c).² Whether NFP existed at the time an OFA was required to be filed is irrelevant. A person must file the OFA within four months of the application being filed. NFP was not a person at that time and so was not eligible to file an OFA. The OFA statute does not make an exception allowing a newly created person to file a late OFA. Indeed, the legislative history quoted above emphasizes that the OFA procedures are to protect "carriers from protracted legal proceedings."

The creation of NFP is not a valid reason for the Board to permit the filing of an OFA more than six years after it was required to be filed.

2. A potential shipper locating on Segment 1 does not justify a late filed OFA.

NFP argues that Gaumer Industries and Gaumer's Chasis Engineering (jointly referred to as the "Manufacturers") have located along Segment 1, that the Manufacturers require rail service to compete in the world market, and that NFP can provide rail service under the OFA.

There is no evidence of record that the Manufacturers require rail service, particularly rail service provided by or under the auspices of NFP. CSXT has not received a request for rail service from Manufacturers in Chambersburg. Manufacturers located along Segment 1 after the abandonment had been granted. Due diligence would have alerted them to the abandonment and the possibility that neither CSXT nor any one else would provide rail service. Manufacturers

move to an abandoned rail line is not a basis for a third party to be able to file an OFA six years later than required by statute. All of the arguments made in Section 1 above weigh against NFP's argument that Manufacturers' new location on Segment 1 permits the filing of an OFA more than six years late.

3. Delayed abandonment consummation of Segment 1 does not justify a late OFA.

CSXT filed to abandon the Line to accommodate a request of Chambersburg. An OFA to acquire Segment 2 was agreed to by CSXT, but the OFA was withdrawn by the Offerors after the *July Decision*. Once the OFA for Segment 2 was withdrawn, CSXT restarted negotiations with Chambersburg to sell Segment 2 for interim trail use/rail banking and to also sell Chambersburg Segment 1. The sale to Chambersburg has not proceeded as quickly as CSXT or Chambersburg would have liked, but the sale is progressing.

NFP suggests that there will be no harm to CSXT from the OFA. NFP is wrong. CSXT will have to revalue Segment 1. As the Board well knows, the value of steel has substantially increased in the past several years. Moreover, real estate has been escalating throughout the country. CSXT will incur the costs of diverting its employees to value Segment 1, as well as hire an appraiser to value the real estate. If NFP does not agree with a new and most likely substantially higher net liquidation value of Segment 1, CSXT will then have to litigate the valuation. The OFA process will distract CSXT from finalizing the transaction with Chambersburg and cause further delay, especially if NFP backs out of the OFA, as the Offerors for Segment 2 did.

² The Board has adopted this same time period for the filing of an OFA when a petition for exemption for abandonment or a notice of exemption for abandonment is filed. 49 C.F.R. § 1152.27(b)(2).

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 or the Manufacturers 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 A STAY

NFP again requests a stay, but as in the Petition, has not justified a stay. CSXT adopts the arguments it made in the Reply filed on March 21, 2005 to NFP's stay request.

CONCLUSION

CSXT respectfully requests that the Board strike the Surreply, or in the alternative deny the relief sought in the Surreply.

Respectfully Submitted,



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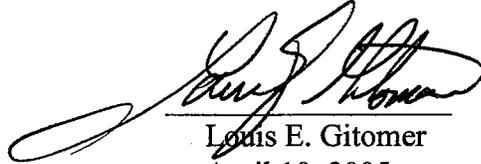
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Attorneys for:
CSX TRANSPORTATION, INC.

Dated: April 19, 2005

CERTIFICATE OF SERVICE

I certify that this day, April 19, 2005, I have served copies of this Motion to Strike and Reply on all parties of record in this proceeding, by first class mail, postage pre-paid.



Louis E. Gitomer
April 19, 2005