

April 26, 2007

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-00001

ENTERED  
Office of Proceedings

APR 26 2007

Part of  
Public Record



Re: Docket No. AB-1010  
*Petition for Waiver and Exemption*  
*CSX Corporation, Adverse Abandonment in Shelby County, Tennessee*

Dear Secretary Williams:

Enclosed please find the original plus ten copies of Memphis Community Connector's *Petition for Waiver and Exemption, CSX Corporation, Adverse Abandonment in Shelby County, Tennessee*. A check in the amount of \$1,500.00, made payable to the Secretary, Surface Transportation Board, is also enclosed to cover the related filing fee. As a courtesy, electronic copies of this filing in Microsoft Word and Adobe Acrobat are contained on the enclosed diskette.

One additional copy of this filing is enclosed for stamping and return to our offices.

It is our understanding that, pursuant to 49 C.F.R. 1152.24(e)(5), the Director of the Office of Proceedings will issue a decision on this petition within 30 days. Should you have any questions or require additional information to facilitate meeting this schedule, please do not hesitate to contact me.

Sincerely,

Nicholas J. DiMichael  
*Attorney for Memphis Community Connector*

**FEE RECEIVED FILED**

APR 26 2007

APR 26 2007

SURFACE  
TRANSPORTATION BOARD

SURFACE  
TRANSPORTATION BOARD

Nicholas DiMichael @ ThompsonHine.com Phone 202 263 4103 Fax 202 331 8330

TWP 1876971

BEFORE THE  
SURFACE TRANSPORTATION BOARD

219,179  
APR 26 2007  
RECEIVED

STB Docket No. AB 1010

CSX CORPORATION

ADVERSE ABANDONMENT IN SHELBY COUNTY TENNESSEE

PETITION FOR WAIVER AND EXEMPTION

ENTERED  
Office of Proceedings

APR 26 2007

Part of  
Public Record

MEMPHIS COMMUNITY CONNECTOR  
130 North Court Ave  
Memphis, Shelby County, Tennessee 38103

By Its Attorneys

**FEE RECEIVED**

APR 26 2007

SURFACE  
TRANSPORTATION BOARD

Nicholas J DiMichael  
Jeffrey O. Moreno  
Laurence W Prange  
Thompson Hine LLP  
1920 N St. N.W  
Suite 800  
Washington, D.C. 20036  
(202) 263-4103

Dated: April 26, 2007

**FILED**

APR 26 2007

SURFACE  
TRANSPORTATION BOARD

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**STB Docket No. AB 1010  
CSX CORPORATION  
ADVERSE ABANDONMENT IN SHELBY COUNTY TENNESSEE**

---

**PETITION FOR WAIVER AND EXEMPTION**

---

Pursuant to 49 C.F.R. § 1152.24(e)(5) and 49 U.S.C. § 10502, Memphis Community Connector (referred to hereinafter as "Petitioner") hereby petitions the Surface Transportation Board ("Board") for the waiver of certain requirements of the Board's abandonment regulations at 49 C.F.R. part 1152, and for exemption from certain provisions of Subtitle IV of Title 49 of the U.S. Code that pertain to abandonments.

**I. BACKGROUND**

Shelby County Tennessee, which includes the City of Memphis, has enjoyed widespread growth in the past several years. The population of Shelby County has increased by more than ten percent since 1990.<sup>1</sup> With this growth comes an increased use of and demand for community services, including park and recreation services. As many other communities have done before, Petitioner and other persons intend to convert a long-neglected railroad line in Shelby County to provide pedestrian and bicycle trails to the citizens of the community.

---

<sup>1</sup> U.S. Census Bureau, 2006 Population Estimates, Census 2000, 1990 Census

The railroad line that the Petitioner, and possibly other persons to be named in the Application for Abandonment, intends to transform into a trail for community use is an unused CSX Transportation, Inc. ("CSXT") railroad corridor. The entire corridor runs 13.34 miles, from milepost 210 66, near Lenow and Macon Roads in Cordova, Tennessee, to milepost 224 00, near South Flicker Street and Union Avenue, in Memphis, Tennessee. The railroad line has been out of service since March 1, 2001, when CSXT embargoed the line to avoid unsafe operations over two bridges. CSXT later sought and obtained authority from the Board to discontinue service along the entire line.

There are currently no shippers along this corridor. After embargoing the line on March 1, 2001, CSXT filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon the entire line. The petition was denied by the Board, because of opposition from four shippers along the line and because of CSXT's failure to support the data that it had presented.<sup>2</sup>

On March 29, 2002, CSXT filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over the eastern 12.24 mile segment of the line. As discontinuance over this segment of the line was not challenged, the Board granted the petition.<sup>3</sup>

On July 10, 2002, CSXT filed an application with the Board seeking authorization under 49 U.S.C. 10903 to discontinue service over the remaining 1.1 mile segment of the line. Although discontinuance over this segment of the line was challenged by one shipper, the Board

---

<sup>2</sup> *CSX Transportation, Inc. Abandonment Exemption - (Between Memphis and Cordova) in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 590X), served Dec. 12, 2001.

<sup>3</sup> *CSX Transportation, Inc. - Discontinuance Exemption - (Between East of Memphis and Cordova) in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 615X), served July 17, 2002.

granted the application.<sup>4</sup> Since the embargo and the subsequent discontinuance over the line, CSX has not maintained this corridor, and the condition of the railroad line is so degraded that a return of rail service along the line would entail extensive and costly rehabilitation of the line, including the replacement of at least one bridge.<sup>5</sup>

Petitioner intends to seek an adverse or third party abandonment of this railroad corridor because such an abandonment promotes the present and future public convenience and necessity. Additionally, because there are currently no shippers along the line, and since there have been no shippers on the line since at least March 1, 2001, abandonment will not deprive a shipper of needed rail service.

## II. WAIVERS REQUESTED

As the Board and its predecessor, the Interstate Commerce Commission ("ICC"), have consistently found, much of the information that the Board's regulations otherwise require in an abandonment proceeding is largely inapplicable or irrelevant to an application for adverse discontinuance or abandonment. *Seminole Gulf Railway, L.P. - Adverse Abandonment - In Lee County, FL*, STB Docket No. AB-400 (Sub-No. 4), served June 9, 2004 ("*Seminole Gulf*"); (citing, *Napa Valley Wine Train, Inc. - Adverse Abandonment - In Napa Valley, CA*, STB Docket No. AB-582, served Mar. 30, 2001 ("*Napa Valley*")); *Chelsea Property Owners Abandonment - Portion of Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY*, Docket No. AB-167 (Sub-No. 1094), served July 19, 1989. Consistent with Board precedent, Petitioner requests waivers from the following provisions:

---

<sup>4</sup> *CSX Transportation, Inc. Discontinuance - at Memphis, in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 618), served Oct. 23, 2002.

<sup>5</sup> In a complaint filed on July 19, 2002, Bolen-Brunson-Bell Lumber Company, Inc. alleged that CSX unlawfully maintained an embargo on the 1.1 mile western segment of the line. In a decision served May 15, 2003, the STB found that the embargo was not unreasonable, in view of the significant cost of repairs to a single bridge on

A Notice of Intent Petitioner, and possibly other persons to be named in the Application for Abandonment, intends to file and publish a notice of the proposed adverse abandonment, as required by 49 C.F.R. § 1152.21. Petitioner believes, however, that the form of the notice prescribed in § 1152.21 is inappropriate for use in this proceeding. Therefore, Petitioner requests a waiver of the prescribed form for the notice, and proposes instead to use the form of notice set forth in Attachment A. Such relief is consistent with the Board's decisions in *Seminole Gulf* and in *Norfolk Southern Railway Company - Adverse Abandonment - St. Joseph County, IN*, STB Docket No. AB-290 (Sub-No. 286), served Oct. 26, 2006 ("*St. Joseph County*").

Petitioner requests a waiver of 49 C.F.R. § 1152.20(a)(2)(i), which requires service of the notice upon all significant users of the line. Because there are no current users of the line, significant or otherwise, this provision is inapplicable or irrelevant. However, Petitioner proposes to serve the notice upon the four shippers identified in the earlier abandonment proceeding.<sup>6</sup>

Petitioner requests a waiver of 49 C.F.R. § 1152.20(a)(2)(ii), which requires service of the notice upon the headquarters of all duly certified labor organizations that represent employees on the affected rail line. Because no rail service has been provided on this line in over six (6) years, there are no known railroad employees who would be affected by an adverse abandonment of the line.

---

the line and the small amount of traffic even potentially available on the segment. See, STB Finance Docket No. 34236, *Bolen-Brunson-Bell Lumber Company, Inc. v. CSX Transportation, Inc.*, decision served May 15, 2003.

<sup>6</sup> These were Bolen-Brunson-Bell Lumber Company, Jimmy Whittington Lumber Company, Edmonds Material, Inc., and Memphis Light Gas and Water. See STB Docket No. AB-55 (Sub-No. 590X), served December 12, 2001, p. 1.

Petitioner requests a waiver of 49 C.F.R. § 1152.20(a)(3), which requires the notice to be posted at each station and terminal along the line. Petitioner seeks this waiver because there are no stations or terminals along the affected rail line.

B. System Diagram Map. Petitioner seeks a waiver of all requirements in 49 C.F.R. §§ 1152.10 to 1152.14, and 49 C.F.R. § 1152.24(c)(1). These provisions require the carrier to maintain, file and publish a System Diagram Map ("SDM"), and requires a line to appear on the SDM for at least 60 days before an abandonment application can be filed for the specific line. Waiver of this requirement is appropriate because Petitioner does not own the affected line and cannot amend, file or publish the SDM. Furthermore, waiver of this requirement is consistent with the Board's decision in *St. Joseph County*. See also, *Salt Lake City Corp. Adverse Abandonment—In Salt Lake City, UT*, STB Docket No. AB-33 (Sub-No. 183) (served Oct. 5, 2001) ("*Salt Lake*"). Petitioner notes, however, that CSXT in the prior abandonment proceeding indicated that the line had been included on the railroad's SDM as of March 6, 2002.<sup>7</sup>

C. Contents of the Abandonment Application. Petitioner requests a waiver of the requirements of 49 C.F.R. § 1152.22(a)(4), which requires the carrier to submit with the application a detailed map of the subject line, and § 1152.22(a)(5), which requires inclusion of the rail line on the carrier's SDM, the date upon which the line was first listed on the SDM, and a copy of the line description which accompanies the carrier's SDM. Waiver of these requirements is appropriate because Petitioner, as a third party applicant, does not have access to a detailed map or to CSXT's current SDM, and it does not possess, nor is it

---

<sup>7</sup> Application of CSX Transportation Inc., STB Docket AB-55 (Sub-No. 618) Volume I, July 10, 2002, pp 4, 37-38

able to obtain, this information<sup>8</sup> In recognition of these facts, the Board has granted waivers of these requirements in prior adverse abandonment proceedings. *See Yakima Interurban Lines Assos — Adverse Abandonment- In Yakima County, WA*. STB Docket No AB-600 (served Feb 6, 2004). *Cf St Joseph County* (noting that § 1152 22(a)(4) is customarily waived in adverse abandonments, but denying waiver in that case because applicant actually had access to a detailed map through another STB proceeding) Although the Board required a non-carrier petitioner to submit a SDM in *St Joseph County*, in that proceeding the petitioner was a party to an earlier proceeding involving the same line, thus the petitioner was in possession of the SDM from the earlier proceeding. Petitioner in the instant proceeding, however, was not a party to the earlier STB proceedings involving this rail line and is not in possession of the current SDM for this rail line. Again, however, as discussed above, Petitioner notes that CSXT in the prior abandonment proceeding indicated that the line had been included on the railroad's SDM as of March 6, 2002, and CSXT included in that proceeding a copy of its SDM as of that date.

Petitioner requests a waiver of the requirements of 49 C.F.R. § 1152 22(b) – (d), which requires a description of the present physical condition of the line, estimated deferred maintenance and rehabilitation costs, a description of service performed on the line during the prior year, and a computation of the revenues attributable and avoidable costs for the line to be abandoned. No rail service has been provided over the line for more than six (6) years. CSXT's own assertions in the earlier abandonment and discontinuance proceedings indicate that the cost to rehabilitate the line far exceeded the revenue

---

<sup>8</sup> Petitioners intend to submit a map of the railroad line with their application containing as much of the information required by § 1152 22(a)(4) as they can obtain.

attributable to the line even at that time. Since those proceedings, over 6 years of neglect have contributed to the degraded state of the rail line. As a third party applicant, Petitioner is unable to provide any further description of the line condition, service performed on the line, or revenue and cost data associated with the line. Waiver of these requirements is consistent with prior Board decisions in adverse abandonment cases *St Joseph County*, at 5. See also *Seminole Gulf*, and *East St Louis Jct R R Co. - Adverse Abandonment— In St Clair County IL*, STB Docket No. AB-838, served June 30, 2003 (“*St Clair County*”). Petitioner notes, however, that the information as of 2001 is otherwise available in the evidence submitted by CSXT in the earlier abandonment and discontinuance proceedings.

In view of the waiver requests contained herein, Petitioner further requests that the form of the draft Federal Register notice, as required in 49 C.F.R. § 1152.22(i), be waived. Petitioner proposes instead to utilize the form of draft Federal Register notice set forth in Attachment B.

D. Notice of Consummation Petitioner requests a waiver of the abandonment consummation notice requirement in 49 C.F.R. § 1152.24(f) and the one-year authorization limit in § 1152.29(e)(2). As the Board has held in prior adverse abandonment proceedings, these waivers are appropriate because the applicant does not have control over consummation, since it must invoke state law to obtain control of the property. See *Salt Lake and Napa Valley*.

E. Public Use, Trails, and OFA Conditions Petitioner seeks a waiver of the provisions for offers of financial assistance (“OFA”), public use procedures, and interim trail use and rail banking requirements of 49 C.F.R. §§ 1152.27 through 1152.29. In

connection therewith, Petitioner also seeks an exemption from the requirements of 49 U.S.C. §§ 10904 and 10905

Because Petitioner intends to acquire the CSXT right-of-way for trail use, these procedures will serve no useful purpose and are not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. If the Board were to grant Petitioner's application for adverse abandonment, the Board would withdraw its exclusive jurisdiction over the right-of-way to permit the application of state, local, or other federal laws because there is no overriding federal interest in interstate commerce. In this situation, the Board has noted that, absent an exemption, Sections 10904 and 10905 "could provide a vehicle for someone to invoke agency processes that the Board has determined are not necessary or appropriate." *St. Joseph County*, at 6 (citing, *Kansas City Pub. Ser. Frgt. Operations Abandonment Exemption*, 7 I.C.C. 2d 216, 225 (1990)). See also, *St. Clair County*

WHEREFORE, Petitioner respectfully requests that the Board grant the waivers and exemptions sought herein

Respectfully submitted,



Nicholas J. DiMichael

Jeffrey O. Moreno

Laurence W. Hrange

THOMPSON HINE LLP

1920 N Street, NW

Washington, DC 20033

Phone: (202) 331-8800

Fax: (202) 331-8330

*Attorneys for Memphis Community Connector*

April 26, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of April 2007, copies of the foregoing "Petition for Waiver" were served by U.S. Mail upon counsel for CSX Corporation, namely

CSX Transportation, Inc.  
Law Department  
500 Water Street  
Jacksonville, FL 32202

Louis E. Gitomer, Esq  
Ball Janik, LLP  
1455 F ST. N W. Suite 225  
Washington, D C. 20005  
Attorney for CSX Transportation Inc. in  
STB Docket No. AB-55 (Sub-No. 590X and 618)

as well as on shipper parties in AB-55 (No. 590X)

a) Bolen-Brunson-Bell Lumber Company  
3175 Johnson Avenue  
Memphis, TN 38112

Thomas F. McFarland  
208 South LaSalle St  
Suite 1890  
Chicago, IL 60604  
Attorney for Bolen-Brunson-Bell Lumber Company in AB-55 (No. 590X) and (No. 618)  
and STB Docket No 34236, *Bolen-Brunson-Bell Lumber Company, Inc v CSX  
Transportation Company*

b) Jimmy Whittington Lumber Company  
3637 Jackson Avenue  
Memphis, TN 38108

c) Edmonds Material, Inc.  
9400 Macon Road  
Cordova, TN 38018

d) Memphis Light Gas and Water  
22 S. Main Street  
Memphis, TN 38103

  
Nicholas J. DiMichael

**STB Docket No. AB 1010**  
**CSX CORPORATION**  
**ADVERSE ABANDONMENT IN SHELBY COUNTY TENNESSEE**

**ATTACHMENT A**  
**PROPOSED NOTICE OF INTENT**

NOTICE OF INTENT TO ABANDON OR TO DISCONTINUE SERVICE

(Name of Applicant) gives notice that on or about (insert date application will be filed with the Board) it intends to file with the Surface Transportation Board, Washington, D.C. 20423, an application for permission for to complete the abandonment of (the discontinuance of service on), a line of railroad known as \_\_\_\_\_ extending from railroad milepost near (station name) to (the end of line or rail milepost) near (station name) a line of railroad beginning at milepost 210.66 near Lenow and Macon Roads in Cordova, Tennessee, to milepost 224.00, near South Fliker Street and Union Avenue, in Memphis, Tennessee, which traverses through United States Postal Service ZIP Codes (insert ZIP Codes) 38111, 38112, 38117, 38120, 38122, and 38018, a distance of \_\_\_\_\_ 13.34 miles, in (county) (state) (the line includes the station of (list all Shelby County, Tennessee. There are no stations on the line in order of milepost number, indicating milepost location)

The reason(s) (reasons) for the proposed abandonment (of discontinuance) is (are) \_\_\_\_\_ explain briefly and clearly why the proposed action is being undertaken by the applicant (are that the rail line has been inactive for more than six years, is a nuisance and a safety and environmental hazard to the community in its present condition, and can be utilized by the community as a walking and biking trail) Based on information in our possession, the line (does) (does not) contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

This line of railroad has appeared on the system diagram map or included in the narrative in category 1 since (insert date):

\_\_\_\_ The interest of railroad employees will be protected by (specify the appropriate conditions)

The application will include the applicant's entire case for abandonment (~~or discontinuance~~) (case in chief). Any interested person, after the application is filed on (insert date), may file with the Surface Transportation Board written comments concerning the proposed abandonment (~~or discontinuance~~) or protests to it. These filings are due 45 days from the date of filing of the application. ~~All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 40 L. S. C. 10905 (Sec. 1152.28 of the Board's rules) and any request for a trail use condition under 40 L. S. C. 1247(d) (Sec. 1152.29 of the Board's rules) must also be filed within 45 days from the date of filing of the application.~~ Persons who may oppose the abandonment ~~or discontinuance~~ but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence, should ~~file comments.~~ Persons interested ~~only in seeking public use or trail use conditions~~ should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

Protests must contain that party's entire case in opposition (case in chief) including the following.

- (1) Protestant's name, address and business
- (2) A statement describing protestant's interest in the proceeding including
  - (i) A description of protestant's use of the line;
  - (ii) If protestant does not use the line, information concerning the group or public interest it represents, and
  - (iii) If protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the line profitably, including an appropriate return on its investment for those operations.

(3) Specific reasons why protestant opposes the application, including information regarding protestant's reliance on the involved service [this information must be supported by affidavits of persons with personal knowledge of the fact(s)]

(4) Any rebuttal of material submitted by applicant

In addition, a commenting party or protestant may provide a statement of position and evidence regarding:

~~(i) Intent to offer financial assistance pursuant to 49 U.S.C. 10904 (ii)~~

Environmental impact,

~~(iii) Impact on rural and community development,~~

~~(iv) Recommended provisions for protection of the interests of employees~~

~~(v) Suitability of the properties for other public purposes pursuant to 49 U.S.C. 10905,~~

and

~~(vi) Prospective use of the right-of-way for intermodal use and rail banking under 46~~

~~U.S.C. 1247(d) and Sec. 152.29~~ A protest may demonstrate that

(1) the protestant filed a feeder line application under 49 U.S.C. 10907;

(2) the feeder line application involves any portion of the rail line involved in the abandonment or discontinuance application.

(3) the feeder line application was filed prior to the date the abandonment or discontinuance application was filed, and

(4) the feeder line application is pending before the Board.

Written comments and protests will be considered by the Board in determining what disposition to make of the application. The commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after the application is filed.

Those parties filing protests to the proposed abandonment ~~(or discontinuance)~~ should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to Sec. 1152.25.

Written comments and protests, ~~including all requests for public use and transit use conditions,~~ should indicate the proceeding designation STB

No. AB ----- (Sub-No. -----) and must be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment ~~(or discontinuance)~~ proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant (insert name, address, and phone number). The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a)

The line sought to be abandoned ~~(or discontinued)~~ will be available for subsidy or sale for ~~continued rail use.~~ If the Board decides to permit the abandonment ~~(or discontinuance)~~, in accordance with applicable law and regulations ~~(49 U.S.C. 10014 and 49 CFR 1152.27)~~. No subsidy management approved under ~~49 U.S.C. 10014~~ shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties ~~(49 U.S.C. 10014(f)(4)(B))~~. Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is ~~(insert name and business address)~~.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis

A copy of the application will be available for public inspection on or after (insert date abandonment application is to be filed with Board) ~~at each agency station or terminal on the line proposed to be abandoned or discontinued. If there is no agency station on the line, the application shall be deposited at any agency station through which business for the line is received or forwarded. (insert name, address, location and business hours). The carrier shall furnish a copy of the application to any interested person proposing to file a protest or comment upon request on the Surface Transportation Board website at [www.stb.dot.gov](http://www.stb.dot.gov).~~

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate

**STB Docket No. AB 1010**  
**CSX CORPORATION**  
**ADVERSE ABANDONMENT IN SHELBY COUNTY TENNESSEE**

**ATTACHMENT B**  
**PROPOSED**  
**DRAFT FEDERAL REGISTER NOTICE**



aware that following any abandonment of rail service and salvage of the line the line may be suitable for other public use including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (Sec. 1152.28 of the Board's rules) and any request for a trail use condition under 49 U.S.C. 1247(d) (Sec. 1152.29 of the Board's rules) must be filed within 45 days after the application is filed. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses, containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

- - - - In addition, a commenting party or protestant may provide
- - - (i) An offer of financial assistance, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board whichever occurs earlier)
- - - (ii) Recommended provisions for protection of the interests of employees;
- - - (iii) A request for a public use condition under 49 U.S.C. 10905; and
- - - (iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 49 U.S.C. 1247(d) and Sec. 1152.29. Parties seeking information concerning the filing of protests should refer to Sec. 1152.25.

Written comments and protests including all requests for public use and trail use conditions must indicate the proceeding designation S1B No. AB----- (Sub-No. ----) and should be filed with the Secretary, Surface Transportation Board (Board), Washington, DC 20423, no later than (insert the date 45 days after the date applicant intends to file its application). Interested persons may file a written comment or protest with the Board to become a party to this abandonment (or discontinuance) proceeding. A copy of each written comment or protest shall be served upon the representative of the applicant (insert name, address, and phone number). The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service.

Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding 49 CFR 1104.12(a)

The line sought to be abandoned (or discontinued) will be available for subsidy or sale (or continued rail use if the Board decides to permit the abandonment (or discontinuance), in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904)(4)(B). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is (insert name and business address). Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's

#### Section of Environmental Analysis

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Section of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Section of Environmental Analysis. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.