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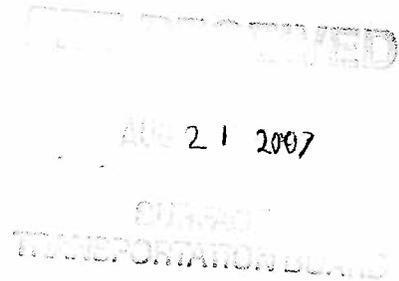
**STEVE ARMBRUST**  
COUNSEL  
BUSINESS & GOVERNANCE

August 17, 2007

Admitted in NY - Not Admitted in FL  
FL Authorized House Counsel

*Via DHL Express – Overnight*

Honorable Vernon A. Williams, Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, D.C. 20423



**Re: STB Docket No. AB-55 (Sub-No. 684X)  
CSX Transportation, Inc. —  
Abandonment Exemption in Shelby County, Tennessee**

Dear Secretary Williams:

Enclosed are the original and 10 copies of each of (i) a Verified Notice of Exemption for abandonment in the above-entitled proceeding and a check for the filing fee of \$3,200 for the Verified Notice and (ii) a Petition for Exemption and the form for processing the filing fee of \$5,700; in each case together with a CD containing the text of the Notice and the Petition, respectfully. In the event you receive this filing before August 21, 2007, I respectfully request that you hold it for filing until August 21, 2007.

Please time and date stamp the additional copy of this letter and return it to me in the self-addressed, stamped envelope. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours,

Steven A. Armbrust

ENTERED  
Office of Proceedings

AUG 21 2007

Part of  
Public Record

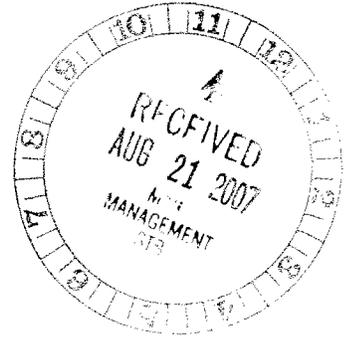
FILED

AUG 21 2007

SCA/pkw

Enclosures

cc: Parties of Record



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-55 (Sub-No. 684X)

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CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—  
IN SHELBY COUNTY, TN

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PETITION FOR EXEMPTION

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Attorneys for: CSX TRANSPORTATION,  
INC.

Dated: August 21, 2007

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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DOCKET NO. AB-55 (SUB-NO. 684X)

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CSX TRANSPORTATION, INC. –ABANDONMENT EXEMPTION–  
IN SHELBY COUNTY, TN

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PETITION FOR EXEMPTION

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CSX Transportation, Inc. (“CSXT”) petitions the Surface Transportation Board (the “Board”) to exempt, under 49 U.S.C. § 10502, CSXT’s abandonment of a 13.34-mile line in CSXT’s Southern Region, Nashville Division, Memphis Terminal Subdivision between Milepost ONI 210.66 (near Cordova) and Milepost ONI 224 (Memphis), known as the Cordova Branch, Shelby County, TN (the “Line”), from the offer of financial assistance provisions of 49 U.S.C. § 10904 (this “OFA Petition”). CSXT has concurrently filed a Notice of Exemption to abandon the Line because it has been out of service for over two years (the “Notice”).<sup>1</sup>

On April 26, 2007, the Memphis Community Connector (“MCC”)<sup>2</sup> filed a Petition for Waiver of certain of the Board’s abandonment rules prior to MCC filing an adverse abandonment application for the Line. MCC contended that it, and other entities, would seek the abandonment

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<sup>1</sup> CSXT was authorized to discontinue service over the Line by the Board in *CSX Transportation, Inc.–Discontinuance Exemption–(Between East of Memphis and Cordova) in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 615X) (STB served July 17, 2002) and *CSX Transportation, Inc.–Discontinuance–at Memphis, in Shelby County, TN*, STB Docket No. AB-55 (Sub No. 618) (STB served October 28, 2002 and May 15, 2003).

authority in order to acquire the Line as a trail. MCC commenced the abandonment process after negotiations between CSXT and the City of Memphis and Shelby County did not result in an agreement.<sup>3</sup>

**THE BOARD SHOULD CONSIDER THIS PETITION FOR EXEMPTION FROM 49 U.S.C. § 10904 CONCURRENTLY WITH THE NOTICE OF EXEMPTION FILED TO ABANDON THE LINE**

CSXT recognizes that it is following an unusual, if not unique, procedure by filing a Notice of Exemption under 49 C.F.R. § 1152.50 seeking the abandonment and a Petition for Exemption under 49 C.F.R. § 1121 seeking exemption from the offer of financial assistance requirements of 49 U.S.C. § 10904. CSXT also recognizes that it has been the Board’s practice to consider the merits of an abandonment exemption and an exemption from the OFA process that had been raised in a single petition. However, that practice is not required by either the statute or the Board’s rules.

The Board “shall exempt ... a transaction ... on application by ... an interested party....” 49 U.S.C. § 10502(a) and (b). The exemption statute does not require the Board to follow the practice it has developed involving OFA exemptions.

The Board’s rules do state that “[w]hensoever the Board determines a proposed abandonment to be exempt from the requirements of 49 U.S.C. § 10903, whether under this section or on the basis of the merits of an individual petition, the provisions of §§1152.27,

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<sup>2</sup> To the best of CSXT’s knowledge, MCC is not a government entity.

<sup>3</sup> CSXT generally does not negotiate transactions in a public forum. CSXT believes in negotiations between the appropriate parties. However, in this instance it is appropriate for the Board to know that CSXT obtained an appraisal for the corridor of the Line of about \$17 million. Memphis and Shelby County obtained their own appraisal, which valued the corridor at about \$15 million. Memphis and Shelby County then offered CSXT \$2 million for the corridor, which CSXT rejected.

1152.28, and 1152.29 as they relate to exemption proceedings shall be applicable.” 49 C.F.R. § 1152.50(a)(2). The rules with regard to OFAs, public use, and trail use apply to an exempt abandonment whether it is filed under 49 C.F.R. § 1152.50 or 49 C.F.R. § 1152.60. As noted above, the Board’s practice has been to consider exemptions from the OFA process when a Petition for Exemption is filed. CSXT urges the Board to also consider and grant (if the criteria are met, as they are in this OFA Petition) exemptions from the OFA process when abandonment is sought through a Notice of Exemption.

Since the application of the OFA, public use, and trail use to exempt abandonments applies equally regardless whether the abandonment is sought through a Notice of Exemption or a Petition for Exemption, CSXT urges the Board to provide railroads seeking an exempt abandonment the opportunity to seek relief from any or all of the OFA, public use, and trail use, through the filing of a Petition for Exemption contemporaneously with the filing of the Notice of Exemption. It is not unusual for the Board to allow the filing of separate exemptions requests to complete an overall transaction. *See* 49 C.F.R. §§ 1150.31(b) and .34.

If the Board were not to change its practice as requested by this Petition, where a line of railroad qualified for the two year out of service exemption of 49 C.F.R. § 1152.50, a railroad would be required to seek revocation of that class exemption in order to file an individual exemption that included a request for an exemption from the OFA provisions.<sup>4</sup> CSXT contends that such a procedure would be less administratively efficient than the procedure it is recommending.

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<sup>4</sup> *See Michigan Central Railway, LLC—Acquisition and Operation Exemption—Lines of Norfolk Southern Railway Company*, STB Finance Docket No. 35063 (STB served August 2, 2007).

The Board provides notice of a Notice of Exemption and a Petition for Exemption within 20 days after either is filed. Since the Petition for Exemption has been filed in the same docket as the Notice of Exemption and is for the same Line, CSXT requests the Board to publish the typical Federal Register notice in the Notice of Exemption proceeding, with the only difference being notification of the public that CSXT has also requested exemption from the OFA process, as is done in individual abandonment exemptions.<sup>5</sup>

One purpose of an exemption from the OFA process is to avoid the delay that is typically involved in the OFA process. CSXT requests the Board to act expeditiously on this OFA Petition so as not to delay the abandonment authorization, which is necessary to convert the Line to interim trail use/rail banking. Hence, CSXT requests the Board to act on this OFA Petition by the time the Notice of Exemption becomes effective.

CSXT respectfully requests the Board to accept this OFA Petition from the OFA provisions for the Line and consider it concurrently with the Notice of Exemption that has been concurrently filed seeking abandonment of the line, as justified above.

#### **SUPPORT FOR THE EXEMPTION FROM 49 U.S.C. § 10904**

CSXT received authority to discontinue service over the Line in 2002 and 2003. No traffic has moved over the line since that time. There has been no demand for service in the more than four years since CSXT obtained authority to discontinue service over the Line. CSXT does not expect any rail oriented business to develop on the Line; there is no overhead traffic on the Line; and there is no demand for service on the Line.

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<sup>5</sup> See *CSX Transportation, Inc.—Abandonment Exemption—in Genesee County, MI*, STB Docket No. AB-55 (Sub-No. 633X) (STB served April 26, 2007).

However, it is apparent from the negotiations that CSXT has held with the City of Memphis and Shelby County, and others, that there is a substantial desire of parties to acquire this corridor for interim trail use/rail banking under 16 U.S.C. § 1247(d). Indeed, CSXT has received additional interest from other parties to convert the Line into a trail. CSXT has filed the Notice of Exemption so that it can proceed to convert the Line to a trail through the orderly process established by Congress in 16 U.S.C. § 1247(d) and by the Board in 49 C.F.R. § 1152.29.

Because the Line is no longer needed for common carrier purposes, retention of the Line under the OFA process as regulated track is no longer necessary. In addition, CSXT has not been advised of any opposition to the abandonment and does not expect any such opposition. Indeed, the MCC and Shelby County support the abandonment of the Line and its conversion to a trail as evidenced by the record in *CSX Transportation, Inc.—Adverse Abandonment—in Shelby County, TN*, STB Docket No. AB-1010.

The Line is a unique and valuable property in the urban Memphis and Shelby County area. It contains valuable real estate. CSXT contends that invoking the OFA procedures could substantially delay or even preclude the conversion of the Line to a trail.<sup>6</sup> Where there has been no recent demand for rail service and there is no prospect that rail service will be required in the near future, instead of authorizing an OFA for speculative rail use of a line, CSXT contends that an exemption from the OFA process to permit conversion of the line to interim trail use/rail

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<sup>6</sup> See *The Cincinnati, New Orleans and Texas Pacific Railway Company—Abandonment Exemption—In Cumberland and Roane Counties, TN*, STB Docket No. AB-290 (Sub-No. 208X) (STB served Nov. 15, 2000); *CSX Transportation, Inc.—Abandonment Exemption—in Genesee County, MI*, STB Docket No. AB-55 (Sub-No. 633X) (STB served July 25, 2007), where the Board exempted abandonments from the OFA process when the line was going to be transferred for use by the shipper on the line.

banking is appropriate since rail banking the Line for future use is the purpose of interim trail use.

### **ARGUMENT IN SUPPORT OF EXEMPTION FROM 49 U.S.C. § 10904**

CSXT files this Petition under 49 U.S.C. § 10502 for an exemption from the provisions of 49 U.S.C. § 10904, in order convert the Line to an interim trail. Under 49 U.S.C. § 10904, a line that has been authorized for abandonment may be acquired for continued rail purposes. Under 49 U.S.C. § 10502, the Board must exempt a transaction from regulation when it finds that:

- (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and
- (2) either:
  - (a) the transaction is of limited scope, or
  - (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress encouraged the Board's predecessor agency to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that,

consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96 the Cong. 2d Sess. 105 (1980). See also *Exemption From Regulation—Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provision as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

**A. The Application of 49 U.S.C. § 10904 Is Not Necessary to Carry Out the Rail Transportation Policy**

Detailed scrutiny of the exemption from 49 U.S.C. § 10904 is not necessary to carry out the rail transportation policy.

An exemption would minimize the unnecessary expense associated with the preparation of valuations in the OFA process, expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. § 10101 (2) and (7). The Board and its predecessor, the Interstate Commerce Commission have granted exemptions from 49 U.S.C. § 10904 where the right-of-way is needed for a valid purpose and there is no overriding public need for continued rail service.<sup>7</sup> CSXT contends that the sale of the Line for interim trail use/rail banking meets these criteria.

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<sup>7</sup> See *Doniphan, Kensett and Searcy Railway—Abandonment Exemption—In Searcy, White County, AR*, STB Docket No. AB-558X (STB served May 6, 1999); *Union Pacific Railroad Company—Abandonment Exemption—In Salt Lake County, UT*, STB Docket No. AB-33 (Sub-No. 116X) (STB served September 30, 1998); *K & E Railway Company—Abandonment Exemption—In Alfalfa, Garfield, and Grant Counties, OK and Barber County, KS*, STB Docket No. AB-480X (STB served December 31, 1996); and *Southern Pacific Transportation Company—Discontinuance of Service Exemption—In Los Angeles County, CA*, ICC Docket No. AB-12 (Sub-No. 172X) (ICC served December 23, 1994).

The imposition of an OFA condition would delay the conversion of the Line to interim trail use/rail banking for at least six months, if not more if this abandonment were subjected to an OFA condition. Conversion of the Line to interim trail use/rail banking would be delayed, if not thwarted.

Nor will the exemption from 49 U.S.C. § 10904 result in a loss of rail service. There has been no rail service over the Line since 2003 and CSXT is unaware of any demand for rail service.

Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected since the public will not be deprived of any needed rail services.

**B. This Transaction Is Of Limited Scope**

The proposed transaction is of limited scope. CSXT seeks exemption from 49 U.S.C. § 10904 for 13.34 miles of trackage in one county in one State.

**C. This Transaction Will Not Result In An Abuse Of Market Power.**

There are no shippers located on the Line. CSXT has not received a request for service for more than four years. Because there are no longer any rail transportation customers on the Line, it is clear that the proposed exemption from 49 U.S.C. § 10904 presents no opportunity for an abuse of market power.

## CONCLUSION

CSXT respectfully requests the Board to consider this OFA Petition concurrently with the Notice of Exemption filed for the Line and grant an exemption from the provisions of 49 U.S.C. § 10904 with regard to the abandonment of the Line.

Respectfully submitted,



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Lou\_Gitomer@verizon.net

Attorneys for: CSX TRANSPORTATION,  
INC.

Dated: August 21, 2007

## CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.50 (d) (1), the undersigned hereby certifies that notice of the Petition in Docket No. AB-55 (Sub-No. 684X) was mailed via DHL overnight mail on August 10, 2007, to the following parties:

### State Public Service Commission

Transportation Department  
700 James K. Polk Building  
Nashville, Tennessee 37243-0349

Regulatory Authority  
450 James Robertson Parkway  
Nashville, Tennessee 37243-0505

### Military Surface Deployment and Distribution Command Transportation Engineering Agency

SDDCTEA  
ATTN: Railroads for National Defense  
720 Thimble Shoals Blvd.  
Suite 130  
Newport News, Virginia 23606-2574

### National Park Service

U. S. Department of the Interior  
National Park Service  
Attention: Mr. Charlie Stockman  
Acting Conservation and Outdoor Recreation Manager  
1201 I Street, NW, 9th Floor  
Washington, DC 20005

### National Park Service

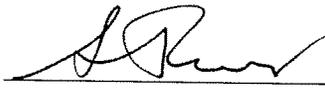
U.S. Department of Interior  
National Park Service  
Land Resources Division  
1201 Eye St., N.W.  
Washington, DC 20005

U.S. Department of Agriculture

U.S. Department of Agriculture  
Chief of the Forest Service  
4th Floor N.W., Auditors' Building  
14th Street and Independence Avenue, S.W.  
Washington, D.C. 20250

In addition, notice of the Petition was served on the following attorney via DHL overnight mail and via electronic mail:

Nicholas J. DiMichael, Esquire  
Thompson Hine LLP  
1920 N Street, N.W. Suite 800  
Washington, DC 20036



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Steven C. Armbrust  
August 17, 2007

## CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the Petition for Exemption in Docket No. AB-55 (Sub-No. 684X) was advertised on August 16, 2007 in The Memphis Daily News, a newspaper of general circulation in Shelby County, TN, as required by 49 C.F.R. § 1105.12.

A handwritten signature in black ink, appearing to read 'S. Armbrust', is written over a horizontal line.

Steven C. Armbrust  
August 17, 2007