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224/464
2/2
January 29, 2009



Via Hand Delivery

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

FILED

FEB 03 2009

SURFACE
TRANSPORTATION BOARD

FEE RECEIVED

FEB 03 2009

SURFACE
TRANSPORTATION BOARD

RE Finance Docket No 35211
Port Terminal Railroad Notice of Exemption to
Operate in Charleston County, South Carolina

Dear Ms. Quinlan

Enclosed for filing in the above-referenced docket please find one (1) original and ten (10) copies of a Notice of Exemption to operate a line of railroad in Charleston County, South Carolina. In addition, we have enclosed a CD-Rom containing a Word copy of the Notice of Exemption and Caption Summary. Finally, we have enclosed a check made payable to the Surface Transportation Board in the amount of \$1,800 per the current schedule of filing fees.

Kindly date stamp the additional copy of this letter and Notice of Exemption and return the same to our courier.

If you have any questions regarding the enclosed, please contact me at the telephone number listed above.

ENTERED
Office of Proceedings

FEB 03 2009

Part of
Public Record

Very truly yours,

DEREK F. DEAN

Enclosures

cc Jeffrey McWhorter, Port Terminal Railroad and South Carolina Division of Public Railways (w/ enc FD No 35211)



BEFORE THE
SURFACE TRANSPORTATION BOARD

Notice of Exemption to Operate of Port Terminal
Railroad, a subsidiary of the South Carolina
Division of Public Railways

Finance Docket 35211

NOTICE OF EXEMPTION TO OPERATE

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South Carolina Division of Public Railways

Counsel for Port Terminal Railroad and
South Carolina Division of Public
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February 3, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

Notice of Exemption to Operate of Port Terminal
Railroad, a subsidiary of the South Carolina
Division of Public Railways

Finance Docket 35211

NOTICE OF EXEMPTION TO OPERATE

Port Terminal Railroad ("PTR"), a Class III rail carrier and subsidiary of the South Carolina Division of Public Railways ("SCPR"),¹ is a common carrier by railroad organized by the State of South Carolina to provide connecting service between main line railroads and port terminal operators in the Charleston area. PTR now submits this Notice of Exemption ("Notice"), pursuant to 49 C.F.R. §1150.41 to operate over the railroad lines located on the former Charleston Naval Base Complex in Charleston County, South Carolina as more fully described below and in Exhibit A.²

¹ South Carolina Division of Public Railways, a Division of the South Carolina Department of Commerce, is organized and exists under the laws of the State of South Carolina. S.C. Code §13-1-1310.

² This line of railroad (hereinafter referred to as the "Navy Base Main Line"), measuring approximately 1.97 total route miles (i.e., approximately 10,380 feet) in length plus a run-around track that is approximately 1,000 feet in length, is geographically bordered by the former Navy Base border. The Navy Base Main Line includes and is more accurately described as (1) the line of track that begins at the point of switch with the North Charleston Terminal Company ("NCTC") railroad, (2) proceeds south and enters the North Gate 1 of the former Navy Base near Virginia Avenue, (3) continues to proceed south and crosses over the Noisette Creek, (4) then crosses Avenue D at grade and proceeds on the east side of Avenue D, (5) turns southeast near the intersection of Avenue D and Turnbull Avenue, (6) crosses Turnbull Avenue at grade, (7) then turns south along the west side of North Hobson Avenue and runs parallel to North Hobson Avenue, (8) then turns southeast and crosses North Hobson Avenue at grade, and (9) proceeds on the east side of North Hobson Avenue to the point where it enters the SCSPA Veterans Terminal near Viaduct Road. The Navy Base Main Line connects in the north at Gate 1 to the NCTC railroad, which is a joint operation between CSX Transportation ("CSX") and Norfolk Southern ("NS"), and to the west with CSX. There is currently no connection between PTR and CSX or NS to the south.

The PTR currently operates under a certificate issued by the Interstate Commerce Commission ("ICC") authorizing operations by the PTR in interstate and foreign commerce of an existing railroad located on the property of the South Carolina State Ports Authority ("SCSPA") at the North Charleston Terminal in Charleston County, South Carolina.³ See Decision at Finance Docket 19397 (August 6, 1956). On or about April 1, 1996, the Charleston Naval Base Complex, which is located on property adjacent to the North Charleston Terminal, was closed. Following that closure, the terminal facilities on the former Charleston Naval Base Complex were transferred to the RDA for subsequent transfer to or operation by the SCSPA and the PTR began operating the Navy Base Main Line.

The PTR and SCPR now come before the Surface Transportation Board ("Board") in order to add to PTR's authority by requesting new, but similar, authority to operate in interstate and foreign commerce over railroad lines, which were formerly operated by the U S Department of Defense, located on the former Charleston Naval Base Complex.⁴ PTR intends to continue its railroad services on the Navy Base Main Line between the marine properties located on the former Charleston Naval Base Complex and the main lines operated by CSX Transportation ("CSX") and Norfolk Southern ("NS"). In support of this Notice, PTR states as follows:

³ This line of railroad (hereinafter referred to as the "NCT Main Line"), measuring approximately 1.84 total route miles in length, is more accurately described as the line which is geographically bordered by the Naval Weapon Station to the north, Remount Road to the west, and the Cooper River to the east.

⁴ The PTR was delayed in filing this Notice of Exemption due to the fact that it was unable to locate ICC Finance Docket 19397 until the week of December 8, 2008, and, therefore, was unsure of the scope of the authority granted to PTR to operate in the Charleston area under the authority.

(a) The full name and address of the Class III rail carrier applicant.

Port Terminal Railroad, a subsidiary of
South Carolina Division of Public Railways
540 E Bay Street
Charleston, SC 29403
843-727-2067

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence.

Derek F Dean
Simons & Dean
147 Wappoo Creek Drive, Suite 604
Charleston, SC 29412
Tel 843-762-9132
Fax 843-406-9913

and

Jeffrey M McWhorter
President
Port Terminal Railroad and
South Carolina Division of Public Railways
540 E Bay Street
Charleston, SC 29403
843-727-2067

(c) A statement that an agreement has been reached or details about when an agreement will be reached.

See Section (e) below

(d) The operator of the property.

Port Terminal Railroad, a subsidiary of
South Carolina Division of Public Railways
540 E Bay Street
Charleston, SC 29403
843-727-2067

(e) **A brief summary of the proposed transaction.**

Background

SCPR's mission is to contribute to the economic development of South Carolina by providing railroad services and operations (including main line point-to-point service, industrial track services, switching services, and interchange services between the marine terminals and the main lines serving the Charleston area) to enhance the future prosperity of the State of South Carolina. With respect to the Charleston area, the SCPR's mission is to contribute to the ongoing future development of businesses and business prospects that will enhance the North Charleston area in general and the former Charleston Naval Base Complex in particular. The SCPR accomplishes this mission by operating two Class III railroads in, but not limited to, the Charleston area. This Notice addresses one such Class III railroad, the PTR.

North Charleston Terminal Main Line

On June 7, 1956, the SCSPA, pursuant to powers vested in the SCSPA by Act No. 626 of the 1942 General Assembly of South Carolina, created the PTR to operate certain trackage as a common carrier switching railroad on the property of the SCSPA's North Charleston Terminals. See Application at 1, ICC Finance Docket 19397 (June 15, 1956). By this SCSPA action, the PTR became obligated, under state law, to provide railroad services between the SCSPA's marine terminals and the main lines that serviced the Charleston area. On June 15, 1956, the PTR applied to the ICC for authority to operate certain trackage as a common carrier switching railroad on the property of the SCSPA's North Charleston Terminals. See Application at 1, ICC Finance Docket 19397 (June 15, 1956). Specifically, PTR sought

authority to operate between its connections with three trunk-line carriers (i.e. Atlantic Coast Line Railway Company, the Southern Railway Company, and the Seaboard Air Line Railroad Company) and the various docks, sheds, warehouses and other sidings located on SCSPA property at the North Charleston Terminal. *Id.* On August 6, 1956, the ICC granted PTR's application and issued a certificate of public convenience and necessity authorizing operations by the PTR in interstate and foreign commerce of the existing line of railroad, between the marine terminal and main lines, located on the SCSPA's North Charleston Terminal in Charleston County, South Carolina. *See* Decision at 1, ICC Finance Docket 19397 (August 6, 1956)

On July 14, 1969, the General Assembly of the State of South Carolina created the South Carolina Public Railways Commission ("SCPRC")⁵ as an agency of the State for the express purpose of becoming a carrier by railroad and so that the SCSPA could transfer its common carrier railroad operations to the SCPRC. *See* SCPRC Application at 1, ICC Finance Docket 27254 (November 28, 1972). In November 1972, the SCPRC applied for authority to acquire from the SCSPA tracks, yards, equipment, trackage rights, franchise, licenses, certificates, leases, agreements and labor contracts of two SCSPA railroads, the Port Utilities Commission ("PUC") of Charleston, South Carolina and of the Port Terminal Railroad ("PTR") of South Carolina. The SCPRC sought to operate, maintain and control the PUC and PTR as railroad carriers governed by the rules and regulations of the ICC. *Id.* On March 15, 1973, the

⁵ The SCPRC is now known as the South Carolina Division of Public Railways ("SCPR")

ICC granted the SCPRC's application and approved the acquisition and the transfer of the PUC and PTR certificates to the SCPRC ⁶ See Order at ICC Finance Docket 27254 (March 15, 1973)

Since 1956 the PTR has been the sole provider of these railroad services on the NTC Main Line between the North Charleston Terminal waterfront and dock facilities and the point of interchange with what is now CSX and NS. The PTR continues to maintain the railroad trackage and services three customers on the NTC Main Line, including marine terminal operator SCSPA and shippers SSA Cooper and US Paper.

Navy Base Main Line

As a result of the 1993 Defense Base Closure and Realignment Act, the BRAC Commission recommended closure of Naval Station Charleston and the Charleston Naval Shipyard. Navy operations at the Naval Station and the Shipyard ceased on or about April 1, 1996. Upon information and belief, the Department of Defense conducted its own rail operations on the Navy Base Main Line at the Naval Station and Shipyard prior to the April 1, 1996 closure.

Since May 1996, the PTR has been the sole provider of railroad services (including main line point-to-point service, industrial track services, switching services, and interchange services between the marine terminals and the main lines serving the Charleston area) to

⁶ In its 1972 application, the SCPRC stated that the ICC issued a Certificate of Public Convenience and Necessity to the PTR to operate as a switching railroad common carrier under a "Class 2 Certificate." Today, PTR meets the operating revenue requirements for Class III carriers under 49 C.F.R. §1201.

several customers,⁷ including the SCSPA, between the terminal and points of interchange with CSX and NS, via the Navy Base Main Line.⁸ Many of these operations were initially conducted by way of sublicenses/subleases between SCPR and the Charleston Naval Complex Redevelopment Authority ("RDA").⁹ When sublicenses/subleases to operate expired and were not renewed, the PTR continued to operate and serve its customers on the Navy Base Main Line, at then existing rates or rates governed by tariff, under a verbal agreement with the RDA to continue operations subject to the terms of the prior sublicenses/subleases.¹⁰ These customers are solely dependent on PTR for railroad services and would be seriously harmed without adequate railroad services provided by the PTR. PTR continues its valuable service of maintaining the railroad trackage and provides these customers with access to the national railway system via interchange with CSX and NS.

Status of the Navy Base Main Line

PTR and SCPR are seeking authority to operate on the Navy Base Main Line trackage that is depicted as the "yellow" line within the tan shaded area on Exhibit A.¹¹ However, there

⁷ Customers utilizing PTR's services on the Navy Base Main Line include Neal Brothers, WSI, SCSPA, Veterans Marine Terminal, MTM LLC, and CMMC LLC

⁸ PTR moved approximately 1,163 carloads of lumber, aluminum, rebar, and alloy from 1996 through 2008

⁹ The Charleston Naval Complex Redevelopment Authority (RDA) is a public body, corporate and politic, created and existing in accordance with the provisions of 1976 S.C. Code, Ann. Sec. 31-12-10, *et seq.* RDA is empowered to conduct activities in furtherance of the redevelopment of the Charleston Naval Base Complex

¹⁰ In 2005, SCPR's Tariff 8001 was revised to specifically include the former Charleston Naval Base as an area to be served by the PTR

¹¹ See note 2, *supra*, for a description of the Navy Base Main Line

is currently a dispute concerning title to some of the trackage over which the PTR is operating. In an effort to resolve that dispute, the RDA, which originally acquired the naval base property from the Department of Defense, has filed a Declaratory Judgment action in a state court in the State of South Carolina seeking to resolve the dispute. The SCPR is a party to this proceeding and has asked the court to confirm SCPR's right, via the PTR, to operate over and maintain the subject rail trackage and any and all rights appurtenant thereto. The portion of the trackage depicted as the "double black" line within the tan shaded area on Exhibit A is the track in dispute and the subject of the state court action.¹² The PTR and SCPR expect that their rights to operate over this disputed trackage will be confirmed in the state court proceeding.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and states.

A map clearly indicating the areas to be served is attached hereto at Exhibit A.

(g) A certificate that applicant's projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing under §1150.45.

A certificate as required under this subsection is attached hereto at Exhibit B.

(h) Transactions imposing interchange commitments.

Not applicable.

¹² The portion of the line that is the subject of the state court action is approximately 6,500 feet in length plus a run-around track that is approximately 1,000 feet in length. The track in dispute is more accurately described as the line described in listed items 1 through 8 in note 2, *supra*, with the following change to item no. 9 only: (9) proceeds on the east side of North Hobson Avenue to a point that lines up with the south side of the street labeled 1902 Street.

WHEREFORE, based on the information as outlined in this Notice, the PTR and the SCPR respectfully request that the Board issue a new certificate authorizing the PTR to operate and provide railroad services over the rail lines – i e , the Navy Base Main Line -between the marine properties located on the former Charleston Naval Base Complex and the main lines operated by CSX and NS

Respectfully submitted,



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1909 K Street, N W
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Counsel for Port Terminal Railroad and
South Carolina Division of Public Railways

Counsel for Port Terminal Railroad and
South Carolina Division of Public Railways

EXHIBIT A

Legend

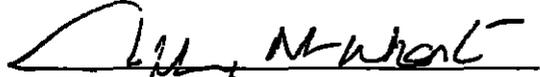
- Primary Limited Access or Interstate
- Primary US and State Highways
- Secondary State and County Highways
- Local Road
- Railline by Owner**
- CSXT
- CSXT - Out of Service
- NS
- NCT
- NCT - Out of Service
- SCPR
- US Government
- Track in Dispute
- Port Terminals
- Naval Complex



EXHIBIT B

Certificate

I, Jeffrey McWhorter, President of Port Terminal Railroad and the South Carolina Division of Public Railways, certify that the projected revenues for the Port Terminal Railroad, a subsidiary of the South Carolina Division of Public Railways, will not result in the creation of a Class II or Class I rail carrier so as to require processing under 49 C F R §1150.45

A handwritten signature in black ink, appearing to read "Jeffrey McWhorter", written over a horizontal line.

Jeffrey McWhorter
President
Port Terminal Railroad and the
South Carolina Division of Public Railways

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No 35211

Port Terminal Railroad ("PTR"), a Class III rail carrier and subsidiary of the South Carolina Division of Public Railways ("SCPR"),¹ is a common carrier by railroad and has filed a notice of exemption under 49 C F R §1150.41 to operate over the lines located on the former Charleston Naval Base Complex in Charleston County, South Carolina. The line is approximately 1.97 total route miles in length (plus a run-around track of approximately 1,000 feet) and is more accurately described as (1) the line of track that begins at the point of switch with the North Charleston Terminal Company ("NCTC") railroad, (2) proceeds south and enters the North Gate 1 of the former Navy Base near Virginia Avenue, (3) continues to proceed south and crosses over the Noisette Creek, (4) then crosses Avenue D at grade and proceeds on the east side of Avenue D, (5) turns southeast near the intersection of Avenue D and Turnbull Avenue, (6) crosses Turnbull Avenue at grade, (7) then turns south along the west side of North Hobson Avenue and runs parallel to North Hobson Avenue, (8) then turns southeast and crosses North Hobson Avenue at grade, and (9) proceeds on the east side of North Hobson Avenue to the point where it enters the SCSPA Veterans Terminal near Viaduct Road.

Comments must be filed with the Board and served on Derek F. Dean, Simons & Dean, 147 Wappoo Creek Drive, Suite 604, Charleston, SC 29412, Tel 843-762-9132.

¹ South Carolina Division of Public Railways, a Division of the South Carolina Department of Commerce, is organized and exists under the laws of the State of South Carolina. S.C. Code §13-1-1310.

The notice is filed under 49 C F R §1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. The filing of a petition to revoke will not automatically stay the transaction.

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