

LAW OFFICES OF  
LOUIS E. GITOMER

LOUIS E. GITOMER  
LOU\_GITOMER@VERIZON.NET

THE ADAMS BUILDING, SUITE 301  
600 BALTIMORE AVENUE  
TOWSON, MARYLAND 21204-4022  
(202) 466-6532  
FAX (410) 332-0885

November 24, 2010

Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423

228449



RE: Finance Docket No. 35446, *City of Temple, TX-Acquisition Exemption-  
Georgetown Railroad Company*

Dear Ms. Brown:

Enclosed for filing are an original and 10 copies of a Petition for Exemption and a disc with the Petition in WORD and pdf format.

The City of Temple, Texas is a local government entity. Pursuant to 49 C.F.R. §1002.2(e)(1) "Filing fees are waived for an application or other proceeding which is filed by ... a ... local government entity." Therefore, the City of Temple, Texas requests the Surface Transportation Board to confirm the waiver of the filing fee for this Petition under 49 C.F.R. §1002.2(e)(1).

Thank you for your assistance. If you have any questions, please call or email me.

Sincerely yours

A handwritten signature in black ink, appearing to read "Louis E. Gitomer".

Louis E. Gitomer  
Attorney for: Temple & Central Texas Railway,  
Inc.

ENTERED  
Office of Proceedings

DEC 15 2010

Part of  
Public Board

Enclosure

**FILED**

DEC 15 2010

**SURFACE  
TRANSPORTATION BOARD**

**FEE RECEIVED**

DEC 15 2010

**SURFACE  
TRANSPORTATION BOARD**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 35446**

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**CITY OF TEMPLE, TX—ACQUISITION EXEMPTION—  
GEORGETOWN RAILROAD COMPANY**

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**PETITION FOR EXEMPTION**

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**Louis E. Gitomer, Esq.  
Law Offices of Louis E. Gitomer  
600 Baltimore Avenue  
Suite 301  
Towson, MD 21204  
(202) 466-6532**

**Attorney for CITY OF TEMPLE, TX**

**Dated: November 24, 2010**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 35446

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CITY OF TEMPLE, TX—ACQUISITION EXEMPTION—  
GEORGETOWN RAILROAD COMPANY

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PETITION FOR EXEMPTION

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The City of Temple, TX (“Temple”), petitions the Surface Transportation Board (the “Board”), under 49 U.S.C. § 10502 and 49 CFR Part 1121, for an exemption from 49 U.S.C. § 10901 for Temple to acquire from the Georgetown Railroad Company (“Georgetown”) about 6.277 miles of rail line between near Belton, TX, milepost 0.0, and Smith, TX, milepost 6.277, in Bell County, TX (the “Line”), and the trackage rights granted to the Georgetown Railroad Company (“Georgetown”) to operate over the Line (the proposed transaction is referred to as the “Acquisition”).<sup>1</sup>

**BACKGROUND**

Temple has agreed to acquire the Line from Georgetown. Temple has also entered agreement with the Temple & Central Texas Railway, Inc. (“TCTR”) to operate the Line (filed under seal).

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<sup>1</sup> At the time Georgetown acquired the Line (*See Georgetown Railroad Company-Acquisition & Operation Exemption-Belton Railroad Company*, ICC Finance Docket No. 31856 (ICC served May 21, 1991)) it also acquired interim trackage rights over the Line (*See Georgetown Railroad Company-Trackage Rights Exemption-Belton Railroad Company*, ICC Finance Docket No. 31857 (ICC served April 1, 1991)). Temple is acquiring all of the rights that Georgetown has in the Line. Because it is unclear whether the trackage rights were ever discontinued by Georgetown, Temple is also acquiring whatever trackage rights Georgetown has.

Temple initially sought authority from the Board to acquire and operate the Line, with the prospect of abandoning the Line. See Notice of Exemption filed on April 8, 2010, in *City Of Temple, TX—Acquisition and Operation Exemption—Georgetown Railroad Company*, Finance Docket No. 35369 (the “Notice”). The Board rejected the Notice in *City Of Temple, TX—Acquisition and Operation Exemption—Georgetown Railroad Company*, Finance Docket No. 35369 (STB served April 23, 2010) (the “Decision”). The Board explained that it appeared that Temple was acquiring the Line in order to abandon it, which was deemed an impermissible use of the notice of exemption procedures. The Board suggested that Temple try to restructure the Acquisition.

Temple has engaged Georgetown in numerous discussions about restructuring the Acquisition and has met with no success. As a result of those discussions, Temple has decided to follow a different course. In another part of the City of Temple, railroad lines to serve an industrial park were constructed by Temple. In 2009, Temple reached an agreement with TCTR to operate the rail line in the industrial park as a common carrier. TCTR obtained Board authority to operate that line. See *Temple & Central Texas Railway, Inc.—Operation Exemption—City of Temple, TX*, STB Finance Docket No. 35255 (STB served July 15, 2009). TCTR began providing common carrier service in the industrial park on September 1, 2009. Temple has proposed that TCTR expand its operations in Temple to include the Line. TCTR has agreed, as evidenced by the concurrently filed Notice of Exemption for TCTR to acquire authority to operate the Line in *Temple & Central Texas Railway, Inc.—Operation Exemption—City of Temple, TX*, STB Finance Docket No. 35447. Temple’s agreement with TCTR requires that TCTR solicit business over the Line and provide common carrier service for remunerative business. Based on its negotiations with Georgetown and TCTR, Temple is filing this petition for exemption with the Board in order to

acquire the Line, including the residual common carrier obligation, in the event that TCTR is unable to provide service on the Line.

Exhibits to this petition include a colored Map in Exhibit B and a verified statement from David A. Blackburn, Temple City Manager, in Exhibit A briefly explaining Temple's negotiations and plans for the Line.

### **ENVIRONMENTAL AND HISTORIC**

Temple is acquiring a 6.277-mile line of railroad from Georgetown, which does not require the filing of an Environmental Report or a Historic Report.

Neither environmental documentation nor a Historic Report is required under the exception in 49 CFR § 1105.6(c)(2). The Line is not in a non-attainment area. There will be no operational changes that exceed the thresholds of 49 CFR § 1105.7(e)(4) and (5). *See Missouri Central Railroad Company--Acquisition and Operation Exemption--Lines of Union Pacific Railroad Company*, STB Finance Docket No. 33508 (STB served April 30, 1998). The transportation of ozone depleting materials (such as nitrogen oxide and freon) is not contemplated. *See* 49 CFR § 1105.7(e)(4) and (5).

Board approval will be required to abandon any service over the Line and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. *See* 49 CFR § 1105.8(b)(1).

The Acquisition does not meet the thresholds established in 49 CFR § 1105.7(e)(4) and (5), and 49 CFR § 1105.8(b)(1) and (3). Therefore, it is not necessary for Temple to submit an Environmental Report, or a Historic Report as part of this Petition for Exemption.

This action will not significantly affect either the quality of the human environment or energy conservation.

## ARGUMENT

### A. THE ACQUISITION SHOULD BE EXEMPTED FROM THE PRIOR APPROVAL REQUIREMENTS OF 49 U.S.C. § 10901.

The acquisition of 6.277 miles of railroad by Temple from Georgetown is subject to prior review and authorization by the Board pursuant to 49 U.S.C. § 10901.

Pursuant to 49 U.S.C. § 10502, however, 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 Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board's predecessor 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, 96th 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) (the “Boxcar Exemption”). 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 provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

In reviewing an exemption petition under Section 10502, the Board does not undertake a broader analysis than it would apply to a transaction under the statutory provision applicable in the absence of the exemption. *See Blackstone Capital Partners -- Cont. Exemp. -- Chicago & N.W. Trans. Co.*, ICC Finance Docket No. 31493 (ICC served July 5, 1989), slip op. at 2; *Village of Palestine v. I.C.C.*, 936 F. 2d 1335 (D.C. Cir. 1991).

Absent an exemption, the Acquisition would be subject to Board review under 49 U.S.C. § 10901(a)(4) where “A person may ... in the case of a person other than a rail carrier, acquire a railroad line.” The Board shall approve the acquisition “unless the Board finds that such activities are inconsistent with the public convenience and necessity.” 49 U.S.C. § 10901(c).

Temple is acquiring the Line from Georgetown and has agreed with TCTR to operate the Line. TCTR has recently begun serving another part of Temple and will expand its operations to serve the Line once traffic has developed.

Since the Acquisition meets the criteria of Section 10901(c), it also meets the criteria of Section 10502, as discussed below.

**1. The Application of 49 U.S.C. § 10901 Is Not Necessary To Carry Out The Rail Transportation Policy.**

Detailed scrutiny of the Acquisition is not necessary to carry out the rail transportation policy.

Granting the requested exemption will act “to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions

when regulation is required.” 49 U.S.C. §10101(2). By allowing Temple to own the Line and TCTR to operate it exemption will “promote a safe and efficient rail transportation system” (49 U.S.C. §10101(3)) and “ensure the development and continuation of a sound rail transportation system ... to meet the needs of the public” (49 U.S.C. §10101(4)). Acquisition of the Line by Temple will also “foster sound economic conditions in transportation” (49 U.S.C. §10101(5)), “reduce regulatory barriers to entry into ... the industry” (49 U.S.C. §10101(7)), allow TCTR “to operate transportation facilities and equipment without detriment to the public health and safety” (49 U.S.C. §10101(8)), “encourage honest and efficient management of railroads” (49 U.S.C. §10101(9)), and “provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part” (49 U.S.C. §10101(15)).

Other aspects of the rail transportation policy are not adversely affected.

## **2. The Acquisition Will Not Result In An Abuse of Market Power**

Temple is acquiring the Line in conjunction with TCTR in order to see if there is a market for rail service on the Line. If there is remunerative demand for service, TCTR will provide that service in competition with the mode of transportation the shipper is using today.

## **3. The Proposed Transaction Is Of Limited Scope**

Because regulation is not needed to protect shippers from abuse of market power, the Board need not address whether the Acquisition is of limited scope. See *Illinois Commerce Commission v. ICC*, 819 F.2d 311, 314 (D.C. Cir. 1987). It is noteworthy, however, that the Acquisition is less extensive than many others that have been exempted by the Board’s predecessor. See, e.g., *Blackstone-CNW; Montana Rail Link—Exemption, Acquisition and Operation—Certain Lines of Burlington Northern Railroad*, ICC Finance Docket No. 31089

(ICC served May 26, 1988); *Wisconsin Central Ltd.—Exemption, Acquisition and Operation—  
Certain Lines of Soo Line Railroad*, ICC Finance Docket No. 31102 (ICC served July 28, 1988).

The Acquisition involves a 6.277-mile line of railroad in one county in one State that does not currently have any local or overhead traffic.

### **EXPEDITED HANDLING REQUESTED**

Pursuant to the agreement between Temple and Georgetown, Temple will be required to pay Georgetown an additional fee if Temple cannot close the Acquisition by February 10, 2011. In order to avoid having to pay the additional charges, Temple respectfully requests the Board to expedite action on this Petition and make the Board's decision effective by February 11, 2011.

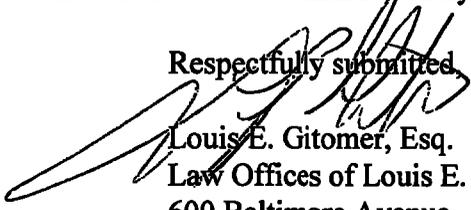
### **CONCLUSION**

Temple has demonstrated in this Petition that the Acquisition will not result in any competitive harm. The Acquisition fosters the transportation policy, will not result in the abuse of market power, and is of limited scope.

### **PRAYER FOR RELIEF**

For the reasons provided herein, Temple prays that the Board grant this Petition for Exemption expeditiously in a decision that is effective no later than February 11, 2011.

Respectfully submitted,



Louis E. Gitomer, Esq.  
Law Offices of Louis E. Gitomer  
600 Baltimore Avenue  
Suite 301  
Towson, MD 21204  
(202) 466-6532

Attorney for CITY OF TEMPLE, TX

Dated: November 24, 2010

**EXHIBIT A-VERIFIED STATEMENT**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 35446**

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**CITY OF TEMPLE, TX—ACQUISITION EXEMPTION—  
GEORGETOWN RAILROAD COMPANY**

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**VERIFIED STATEMENT OF DAVID A. BLACKBURN**

My name is David A. Blackburn. I am the City Manager of the City of Temple, Texas (the “City of Temple”). As the City Manager, I am responsible for the day to day operations of the City of Temple, including overall direction of the City’s economic development efforts. As part of those efforts, the City created the Temple & Central Texas Railway (TCTR) in 2009 in partnership with Patriot Rail, a major short line railroad. TCTR provides switching services and rail maintenance services on rail lines built and maintained by the City in our industrial parks. *Temple & Central Texas Railway, Inc.—Operation Exemption—City of Temple, TX*, STB Finance Docket No. 35255 (STB served July 15, 2009). The scope of our agreement with TCTR and Patriot Rail includes lines added by the City in other parts of our City limits. The purpose of this Verified Statement is to explain the recent steps that the City of Temple has taken to acquire from the Georgetown Railroad Company (“Georgetown”), the 6.277 miles of rail line between near Belton, TX, milepost 0.0, and Smith, TX, milepost 6.277, in Bell County, TX (the “Line”), and trackage rights granted to Georgetown.

The City of Temple has sought to acquire the Line from Georgetown for a number of years. On November 12, 2010, the City of Temple and Georgetown entered a Purchase and Sale Agreement (the “Agreement”) whereby Georgetown agreed to sell the Line to the City of Temple as an active rail line. In addition to the purchase price, the City of Temple will have to

pay Georgetown an extension fee of \$9,000 for each extension of the closing date beyond February 10, 2011 (90 days after execution of the Agreement). In order to avoid the extra extension fees, the City of Temple is seeking expedited handling of this request.

The City of Temple has made arrangements with TCTR to operate the Line as a railroad, if the City's Petition for Exemption is approved by the Surface Transportation Board. The City of Temple and businesses in our industrial park have been pleased with the operations by TCTR in the industrial park, which commenced on September 1, 2009.

We turned to TCTR to see if they would be willing to operate the Line being acquired from Georgetown as a common carrier. Our agreement with TCTR requires them to solicit business over the Line and provide common carrier service for remunerative business. Our expectation, if our Petition is approved by the Surface Transportation Board, is that TCTR will provide similar services to market and serve the Line. Based on its negotiations with Georgetown and TCTR, Temple is filing the petition for exemption with the Board in order to acquire the Line, including the residual common carrier obligation. I understand that TCTR is concurrently filing a notice of exemption with the Board for authority to operate the Line as a common carrier. *Temple & Central Texas Railway, Inc.—Operation Exemption—City of Temple, TX*, STB Finance Docket No. 35447.

The City of Temple intends to acquire the Line so that TCTR can provide service over the Line as demand requires and requests that the Board expeditiously grant the petition to be effective by February 10, 2011 so that the City of Temple will be able to avoid paying additional fees to Georgetown.

**VERIFICATION**

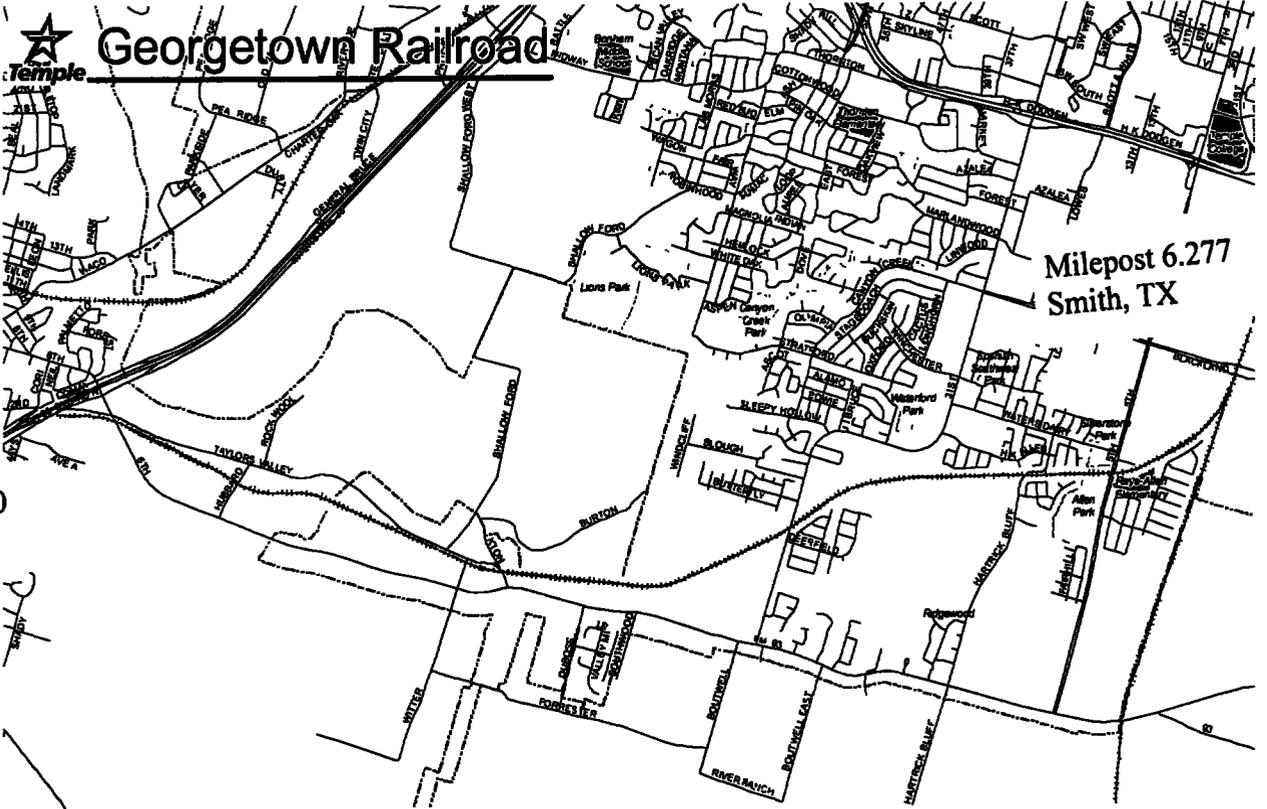
I, David A. Blackburn, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to the file this Verified Statement.

Executed on November 16, 2010.



David A. Blackburn

**EXHIBIT B-MAP**



Milepost 0.0  
Belton, TX

Milepost 6.277  
Smith, TX