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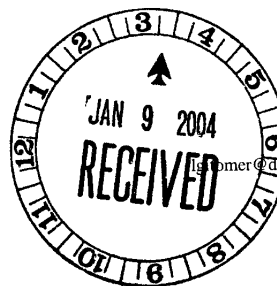
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January 9, 2004

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

ENTERED
Office of Proceedings

JAN 12 2004

Part of
Public Record

209822

RE: Finance Docket No. 34421, *HolRail LLC-Petition for Exemption from 49 U.S.C. § 10901 to Construct and Operate a Rail Line in Orangeburg and Dorchester Counties, South Carolina*

Dear Secretary Williams:

Enclosed are the original and 10 copies of a Motion to Compel Discovery and three discs with the file Motion.

Please time and date stamp the additional copy of this letter and the Motion, and return them to our messenger. Thank you for your assistance.

If you have any questions, call or email me.

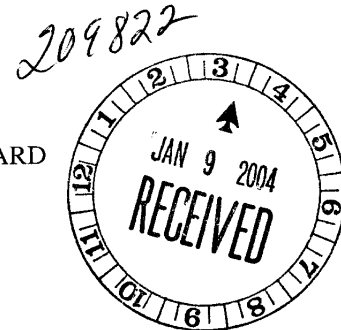
Sincerely yours,

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34421



HOLRAIL LLC-PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT
AND OPERATE A RAIL LINE IN ORANGEBURG AND DORCHESTER COUNTIES,
SOUTH CAROLINA

CSX TRANSPORTATION, INC. MOTION TO COMPEL DISCOVERY RESPONSES

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Attorneys for: CSX TRANSPORTATION,
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Dated: January 9, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34421



HOLRAIL LLC-PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT
AND OPERATE A RAIL LINE IN ORANGEBURG AND DORCHESTER COUNTIES,
SOUTH CAROLINA

CSX TRANSPORTATION, INC. MOTION TO COMPEL DISCOVERY RESPONSES

Pursuant to 49 C.F.R. §§ 1114.30 and 114.31, CSX Transportation, Inc. ("CSXT") hereby moves the Surface Transportation Board (the "Board") for an order compelling HolRail LLC ("HolRail") to respond to CSXT's First Discovery Requests (the "First Discovery Requests"). Attachment A contains CSXT's First Discovery Request and HolRail's Response.

INTRODUCTION

On November 13, 2003, as corrected on December 5, 2003, HolRail filed a Verified Petition for Exemption from the pre-approval requirements of 49 U.S.C. § 10901 pursuant to 49 C.F.R. § 1121 (the "Petition"). HolRail seeks to construct a line of railroad between its facility in Holly Hill, SC and an unspecified connection with the Norfolk Southern Railway Company ("NS") in the vicinity of a facility referred to by HolRail as Giant Cement. HolRail has stated that its preference is to build the line within the CSXT right-of-way (the "Preferred Line"), although CSXT was not made aware of this proposal until HolRail filed the Petition with the

Board and CSXT has not agreed to make its right-of-way available to HolRail to build a railroad line. HolRail has also stated that an alternative is to construct a line east of the CSXT right-of-way.

Prior to filing the Petition, HolRail met with the staff of the Board's Section of Environmental Analysis ("SEA") on October 14, 2003, to discuss the construction project. On October 28, 2003, HolRail filed a letter with SEA requesting waiver of the six month prefiling notice required by 49 C.F.R. § 1105.10(a). The waiver was granted by letter dated November 18, 2003.

On December 3, 2003, CSXT filed a Response in opposition to the Petition, a Motion to Dismiss the Petition, and the First Discovery Request. CSXT limited the information sought from HolRail in the First Discovery Request to the Preferred Line.

HolRail submitted its Responses and Objections on December 18, 2003. Pursuant to an agreement between CSXT and HolRail, the Board granted CSXT an extension to file this Motion to Compel to January 9, 2004.¹ On December 23, 2003, HolRail replied to the Motion to Dismiss and requested leave to, and did, respond to CSXT's Response.

The instant motion is necessitated by the failure of HolRail to provide responses to most of CSXT's First Discovery Requests. CSXT's requests are directed primarily to (1) seeking the support for and documents underlying the arguments made in the Petition by HolRail in support

¹ *HolRail LLC—Construction and Operation Exemption—in Orangeburg and Dorchester Counties, SC*, STB Finance Docket No. 34421 (STB served December 24, 2003).

of the proposed construction put forward in the Petition by HolRail, and (2) the plans for construction that HolRail has proposed within CSXT's right-of-way.

ARGUMENT

The Board's rules authorize broad, liberal discovery, providing in part that a party "may obtain discovery ... regarding any matter, not privileged, which is relevant to the subject matter of a proceeding." 49 C.F.R. § 1114.21. The Board has repeatedly reaffirmed the broad scope of discovery permitted in its proceedings. *See, e.g., FMC Corporation et al v. Union Pacific Railroad Company*, STB Docket No. 42022 (STB served February 5, 1998) at 8 ("parties may obtain discovery regarding any non-privileged matter which is relevant to the subject matter"); *Trailer Bridge, Inc. v. Sea Star Lines*, STB Docket No. WCC-104 (STB served October 27, 2000). In particular, the Board's rules require a party to produce all responsive non-privileged information so long as the requested for that information is reasonably calculated to lead to the discovery of admissible evidence. 49 C.F.R. § 1114.21(a)(2) ("It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence").

In its first General Objection, HolRail objects to 31 discovery requests because they may be relevant to a "petition to cross CSX property" which has not yet been filed by HolRail for the Preferred Line. HolRail has identified the point of contention between CSXT and HolRail. CSXT contends that HolRail is not seeking to cross CSXT's line, but to seize its right-of-way, while HolRail apparently contends that 49 U.S.C. § 10901(d) allows the confiscation of a portion of railroad's right-of-way to construct a parallel rail line, regardless of the physical effect on the

existing rail line. Regardless of the error in HolRail's statutory interpretation, CSXT contends that detailed information concerning the construction proposal on the Preferred Line, whether or not crossing authorization is applicable or required for the construction, is relevant to the Board ruling on HolRail's Petition and is relevant to determining the harm to CSXT's physical operation.² Therefore, CSXT urges the Board to reject HolRail's General Objection No. 1 and order it to produce discovery for Interrogatory Nos. 3, 4, 5, 7, 8, 10, 11, 12, 14, 15, 16, and 17, Document Requests Nos. 3, 4, 5, 6, 7, 8, and 9, and Request for Admission Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, and 12.³

1. HolRail should not be permitted to make arguments in support of the proposed construction and then in discovery object that the underlying support for its own arguments is "irrelevant to the subject matter of this proceeding."

In Interrogatory Nos. 3, 4, 5, 7, 8, 11, 12, and 14, and Document Request No. 7, CSXT is seeking to determine the basis of certain statements made in HolRail's Petition.

HolRail claims that the Holly Hill facility of its parent Holcim (US) Inc. ("Holcim") has completed a plant expansion, that "a substantial portion of Holly Hill's production is shipped by rail," and that "trucking cement over distances greater than 100 miles is uneconomic and impractical." Petition at 4. CSXT is seeking information concerning past and future shipment volumes in I Nos. 3, 4, 5, 11, 12, and 14, and DR No. 7, which is clearly relevant to the claims made by HolRail in the Petition.

² CSXT believes that HolRail has refused to provide such information because it does not exist.

³ CSXT will refer to Interrogatories as I No., Document Requests as DR No., and Requests for Admission as A No.

HolRail claims that it has reevaluated its transportation needs at its Holly Hill facility and that CSXT provides poor service. Petition at 4-5. CSXT sought the basis for these bald statements in I Nos. 7 and 8. HolRail objected on grounds of relevance and ambiguity. Again, HolRail supports its Petition with these arguments but refuses to provide discovery of the basis, if any for its arguments. Such information is clearly relevant to this proceeding, having been put in issue by HolRail.

2. HolRail is proposing to construct a line of railroad. All of the plans for the construction and operation of the Preferred Line are “relevant to the subject matter of this proceeding.”

CSXT is concerned that the construction of the Preferred Line by HolRail will physically damage CSXT’s existing rail line. CSXT has sought limited discovery as to HolRail’s plans for constructing the Preferred Line. HolRail has refused to produce discovery because HolRail contends that it is either irrelevant or is only relevant if and when HolRail files a crossing petition. CSXT contends that the basic plans for construction must be relevant to the Petition, otherwise, the Board will not have a sufficient record to make its determinations under 49 U.S.C. § 10502, especially with regard to the physical effect on CSXT (sections 10101(1, 2, 3, 4, 5, 7, 8, 9, and 11)). To that end, CSXT sought specific information from HolRail.

With respect to planning, CSXT sought information on corporate approval and future budgets to fund construction in I Nos. 16 and 17 and A Nos. 3, 4, and 5. HolRail objects that such information is not relevant. CSXT contends that the sought information is relevant to the construction of the Preferred Line. Indeed, without the necessary corporate approvals and

budgeted funds, HolRail will not be able to even build the Preferred Line, which may be its ultimate goal.

The remainder of discovery sought by CSXT concerns HolRail's plans to build the Preferred Line within CSXT's right-of-way abutting CSXT's existing and operating line of railroad. As has been pointed out in other pleadings in this proceeding, 6,500 feet of CSXT's line runs through the Four Hole Swamp on a narrow right-of-way, only about 40 feet to the east from the center line of the track, on moist swamp land, conditions that render the subsurface considerably less stable than in drained areas. Any disruption of the physical base supporting CSXT's track would disrupt operations and require very expensive repairs. CSXT has sought to discover how HolRail's proposed construction of its Preferred Line will affect CSXT's existing line. HolRail has responded by producing a small unscaled map that shows its Preferred Line physically touching CSXT's line and by stating that any other detail is not relevant. CSXT contends that all details of HolRail's proposed construction of the Preferred Line are relevant, and that a mere approximation of the construction (about two miles) and an unscaled map and overhead photograph are insufficient for the Board to determine if the Preferred Line that HolRail is proposing to build will adversely affect the existing CSXT line. To that end, CSXT sought to determine if HolRail was crossing CSXT's track (I No. 15 and A No. 9), detail of the route of the Preferred Line (DR Nos. 3 and 5 and A Nos. 1, 6, and 8), detail of the plans to construct the Preferred Line (DR Nos. 4, 8, and 9, and A Nos. 11 and 12), and details of HolRail's proposed operations (DR No. 6 and A Nos. 2 and 7). HolRail has objected that such information is not relevant. If HolRail is to construct its Preferred Line, then the Board must

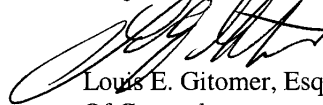
determine the physical impact on CSXT's existing line of the construction and operation of a parallel line in a very narrow right-of-way on an unstable base. CSXT requests that the Board compel HolRail to produce this highly relevant discovery.

CONCLUSION

For all the foregoing reasons, the Board should grant CSXT's motion to compel answers to interrogatories, production of documents, and response to requests for admissions promptly upon issuance of the Board's decision compelling such production.

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Respectfully submitted,



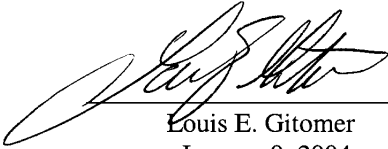
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(202) 638-3307

Attorneys for: CSX TRANSPORTATION,
INC.

Dated: January 9, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served by hand on all parties of record in STB Finance Docket No. 34421.



Louis E. Gitomer
January 9, 2004

ATTACHMENT A

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34421

HOLRAIL LLC-PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT
AND OPERATE A RAIL LINE IN ORANGEBURG AND DORCHESTER COUNTIES,
SOUTH CAROLINA

CSX TRANSPORTATION, INC. FIRST DISCOVERY REQUESTS TO HOLRAIL LLC

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: December 3, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34421

HOLRAIL LLC-PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT
AND OPERATE A RAIL LINE IN ORANGEBURG AND DORCHESTER COUNTIES,
SOUTH CAROLINA

CSX TRANSPORTATION, INC. FIRST DISCOVERY REQUESTS TO HOLRAIL LLC

Pursuant to 49 C.F.R. §§ 1121.2 and 1114.21, .26, .27, and .30, CSX Transportation, Inc. ("CSXT") submits its First Discovery Request to HolRail LLC ("HolRail") and Holcim (US) Inc. ("Holcim"), in connection with the petition filed on November 13, 2003, by HolRail and verified by an employee of Holcim in this proceeding. Counsel for HolRail and Holcim should contact the undersigned promptly to discuss any objections or questions regarding these requests with a view to resolving any disputes or issues of interpretation informally and expeditiously.

CSXT requests that HolRail and Holcim respond to the following Interrogatories, Document Requests and Requests for Admissions in compliance with 49 C.F.R. Part 1114 and in accordance with the following Definitions and Instructions. The responses to these discovery requests should be served on CSXT through their undersigned attorneys at the addresses below, by **December 18, 2003**.

DEFINITIONS AND INSTRUCTIONS

1. "CSXT" shall mean the CSX Transportation, Inc.

2. "HolRail" shall mean HolRail LLC, and any departments, subsidiaries, affiliates, or related companies, its present and former employees, agents, officers, directors, advisors, consultants, divisions, and all other persons or entities acting on its behalf.

3. "Holcim" shall mean Holcim (US) Inc., and any departments, subsidiaries, affiliates, or related companies, its present and former employees, agents, officers, directors, advisors, consultants, divisions, and all other persons or entities acting on its behalf.

4. "Line" shall mean the line of railroad that HolRail proposes to construct in the Petition for Exemption filed on November 13, 2003, within the CSXT right-of-way.

5. "Western Line" shall mean the alternate line proposed to be built a few hundred feet west of the existing CSXT line (as used on page 6 of the Petition).

6. "Eastern Line" shall mean the second preferred route to be built about 50 yards to the east of CSXT's Line (as used on page 7 of the Petition).

7. The "CSXT Line" shall mean the line of railroad owned and operated by CSXT between the Holcim Facility at Holly Hill, SC, and Giant, SC.

8. "Petition" shall mean the Petition for Exemption filed with the STB by HolRail in Finance Docket No. 34421 on November 13, 2003.

9. "STB" shall mean the Surface Transportation Board.

10. "Communicate" and "Communication" shall mean every manner or means of disclosure or transfer or exchange of information whether orally, by document, or otherwise, and whether face to face, in a meeting, by telephone, or other electronic media, mail, personal delivery, or otherwise.

11. "Person" shall mean and include natural persons, partnerships, corporations, and all other forms of organization or association.

12. "Document" or any variation thereof is used in its broadest sense and shall mean any writing, drawing, graph, chart, photograph, tape, phono-record, magnetic disc, compact disc, or other data compilation from which information can be obtained, translated, if necessary through devices into reasonably usable form, and includes, but is not limited to, correspondence, telegrams, cables, telex messages, minutes, reports, studies, specifications, order forms, bills of sale, leases, recordings of telephone or other conversations, or of interviews, conferences or other meetings, affidavits, statements, journals, statistical records, financial statements, accounting records, desk calendars, appointment books, diaries, lists, tabulations, summaries, computer printouts, photographs, maps, or any other items of a similar nature, including all originals, drafts, and non-identical copies.

13. The terms "relate" or "relating to" are to be used in their broadest sense and shall mean to refer to, discuss, involve, reflect, deal with, consist of, represent, constitute, emanate from, be directed at, or in any way to pertain to, in whole or in part, the subject.

14. The singular shall include the plural and vice versa, and the conjunctive shall include the disjunctive and vice versa in order to give these interrogatories and requests for admission the broadest scope.

15. To "identify" or to "describe" a document means to state the following:

- a. The full name of the person who prepared it and his last known address;

- b. The full name of the person who signed it or over whose name it was issued and his last known address;
- c. The full name of each person to whom it was addressed or distributed and his last known address;
- d. The nature and substance of the document with sufficient particularity to enable it to be identified;
- e. Title and number of pages;
- f. Its date or, if it bears no date, the date or approximate date when it was prepared;
- g. Whether any other documents were attached to or included with such documents; and
- h. Its physical location and the name and address of its custodian.

16. To "identify" a person when used with respect to a natural person means to state the person's full name, home and business addresses and telephone numbers, employer and job position at the present time and at the time to which the interrogatory relates, and whether the person is ill, disabled, incompetent, or deceased. To identify a person where the person to be identified is anything other than a natural person means to state its full name, the kind of legal entity which it is, its present or last known address, and its chief executive officer.

17. "Identify," "describe," or any variation thereof, when used with respect to a conversation, meeting, or oral discussion, shall mean stating and describing the date and location of such conversation, meeting, or oral discussion, the name of each person who was present at or who participated in such conversation, meeting, or oral discussion, and the manner in which the conversation, meeting, or oral discussion was conducted (e.g., face-to-face conversation, telephone, etc.)

18. "Identify" means to describe or explain when used in any other context.

19. The answers to these interrogatories, document requests and requests for admissions shall include such information and documents as are within HolRail's custody, possession, or control, or are within the custody, possession, or control of any of HolRail's consultants, accountants, attorneys, or other agents, or which are otherwise available to HolRail. In responding to these interrogatories and requests for admissions, HolRail is specifically instructed to review the personal files, records, notes, correspondence, daily calendars, and telephone logs or records of all persons who have knowledge of the information inquired about in each request.

20. If the answers or portions of answers to these interrogatories are supplied upon information and belief rather than upon actual knowledge, HolRail should so state and specifically describe or identify the source or sources of such information and belief.

21. Each interrogatory should be answered separately and fully in writing. The answers to these interrogatories should include, but not be limited to, an identification of each person having knowledge of the information provided in the answer, and of all documents (including calculations) and communications relating to that information.

22. If HolRail objects to any interrogatory, document request or request for admission, HolRail must state in writing the reason for the objection.

23. These discovery requests are continuing in nature and should be amended and supplemented immediately if at any time any of the following occurs:

a. HolRail determines that the original answers to these discovery requests as of the time they were filed, for whatever reason, were incorrect;

b. new developments occur (such as the retaining of an expert, etc.) which, if HolRail's answers were being filed as of the time of these new developments, would have to be disclosed in those answers;

c. new information is developed (such as the identification of additional witnesses or additional documents) which, if known at the time of the filing of the original answers, would have been required to have been disclosed in such answers.

24. Unless otherwise specified, the time period covered by these discovery requests is January 1, 2002, to the date of HolRail's responses.

25. Each interrogatory, document request and request for admission herein stands independent of each and every other interrogatory, document request and request for admission. No interrogatory, document request or request for admission modifies, limits, or relates to any other interrogatory, document request or request for admission unless specifically stated in the interrogatory, document request or request for admission.

26. If any discovery request herein cannot be complied with in full, it shall be complied with to the extent possible with an explanation as to why full compliance is not possible.

27. If any document sought to be discovered is in the Petition, then HolRail shall refer to the page number in the Petition where the document may be found.

INTERROGATORIES

1. Identify the Person who reevaluated Holcim's rail transportation needs.
2. Identify the end points of the Line.
3. Identify the number of truckloads of cement shipped from the Holcim plant at Holly Hill in 2000, 2001, 2002, and 2003.
4. Identify the total annual number of rail cars proposed to be shipped to and from the Holcim plant at Holly Hill, SC in 2004, 2005, and 2006.
5. Identify the total annual number of rail cars proposed to be shipped to and from the Holcim plant at Holly Hill, SC in 2004, 2005, and 2006, via HolRail.
6. Identify the date of creation of each document produced in response to the following document requests. If the exact date of creation of the document is not known, identify whether it was created before or after the filing of the Petition on November 13, 2003.
7. Identify the factors Holcim considered in reevaluating its rail transportation needs.
8. Identify the factors Holcim has used to determine that CSXT provides "consistently poor service."
9. Identify the point of connection between the line HolRail proposes to construct and the NS at Giant, SC.

10. Identify the Person who studied the feasibility of building the Line in the CSXT right-of-way.
11. Identify the number of annual carloads that Holcim projects to transport outbound via rail upon reaching optimum production.
12. Identify the number of annual truckloads that Holcim projects to transport outbound upon reaching optimum production.
13. Identify the third party consultant retained by HolRail in compliance with 49 C.F.R. § 1105.10(d).
14. Identify the restrictions that CSXT imposes on Holcim's use of private rail cars.
15. Identify the locations where HolRail proposes to cross the CSXT track south of Holcim's Holly Hill facility for each alternative.
16. Identify the dollar amount budgeted by HolRail or Holcim for construction of the Line.
17. Identify the Board resolutions of Holcim or HolRail authorizing expenditure of funds to construct the Line, the Eastern Line, or the Western Line.

DOCUMENT REQUESTS

1. Produce all documents used to prepare the Petition.
2. Produce all documents used to respond to these discovery requests.
3. Produce all agreements granting HolRail or Holcim access to the land owned by a neighboring cement facility as discussed at page 6 of the Petition.
4. Produce all construction plans for the Line, the Eastern Line and the Western Line.

5. Produce the study the HolRail refers to on page 6 of the Petition.
6. Produce all documents relating to the service to be provided by NS discussed in the Petition.
7. Produce all documents that are the basis for the statement at page 5 of the Petition that CSXT's "service is unreliable and inadequate".
8. Produce all documents that are the basis for the statement at page 6 of the Petition that "Holcim has studied the dimensions of the corridor and concluded that construction and operation of HolRail's rail line parallel to the existing CSX line, within the CSX right-of-way, is feasible and would not affect CSX's operations."
9. Produce all engineering plans and all studies prepared since January 1, 1995 to build the Line over the "existing CSX rail corridor", as stated on Page 6 of the Petition.

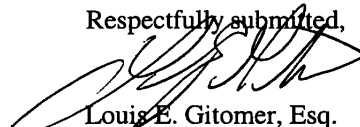
REQUESTS FOR ADMISSIONS

1. Admit or deny that HolRail or Holcim has not conducted an on-site inspection of the CSXT right-of-way where HolRail intends to build the Line.
2. Admit or deny that HolRail or Holcim has discussed the operation of the Line with NS.
3. Admit or deny that HolRail or Holcim has not budgeted any funds to construct the Line in 2004.
4. Admit or deny that HolRail or Holcim has not budgeted any funds to construct the Line in 2005.

5. Admit or deny that HolRail or Holcim has not budgeted any funds to construct the Line in 2006.
6. Admit or deny that the Line is only two miles in length.
7. Admit or deny that that HolRail or Holcim has discussed operations over the facility at Giant with Giant Cement.
8. Admit or deny that there is an agreement for HolRail to operate over the property of Giant Cement.
9. Admit or deny that HolRail does not intend to cross the CSXT track running south of the Holcim facility at Holly Hills.
10. Admit or deny that HolRail intends to construct the Line parallel to the CSXT track south of Holcim's Holly hill facility.
11. Admit or deny that the ground stability along the Line has been studied by HolRail or Holcim.
12. Admit or deny that the ground stability along the Line has been inspected by HolRail or Holcim.

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Respectfully submitted,



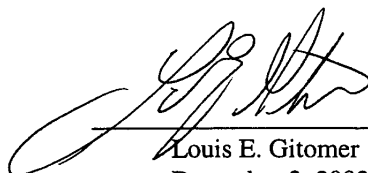
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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: December 3, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served by hand on
counsel for the HolRail LLC.



Louis E. Gitomer
December 3, 2003

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 34421

**HOLRAIL LLC PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 TO
CONSTRUCT AND OPERATE A RAIL LINE IN ORANGEBURG AND DORCHESTER
COUNTIES, SOUTH CAROLINA**

**HOLRAIL LLC'S RESPONSES AND OBJECTIONS TO
CSX TRANSPORTATION, INC.'S FIRST DISCOVERY REQUESTS**

HolRail LLC ("HolRail") hereby provides its Responses and Objections to the First Discovery Requests of CSX Transportation, Inc. ("CSX"). These Responses and Objections are timely submitted in accordance with 49 C.F.R. § 1114.21 et seq.

GENERAL OBJECTIONS

1. HolRail objects to CSX's First Discovery Requests to the extent that they are irrelevant to HolRail's Petition for Exemption ("Petition") and/or not reasonably calculated to lead to the discovery of admissible evidence. This general objection applies to Interrogatory nos. 1, 3, 4, 5, 7, 8, 10, 11, 12, 14, 15, 16, and 17; Document Request nos. 3, 4, 5, 6, 7, 8, and 9; and Request for Admission nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, and 12. Some of the foregoing objectionable requests may be relevant to a petition to cross CSX property, pursuant to 49 U.S.C. § 10901(d), if and when HolRail files such a petition.
2. HolRail objects to CSX's First Discovery Requests to the extent that they seek information or documents that constitute or disclose confidential or proprietary information, including third-party proprietary information, or other sensitive, non-public information.

3. HolRail objects to CSX's First Discovery Requests to the extent that they seek information or documents that, if produced, would result in the violation of any obligation, contractual or otherwise, to third parties.
4. HolRail objects to CSX's First Discovery Requests to the extent that they seek information or disclosure of documents that are protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and/or any other applicable privilege or doctrine. Any production of privileged or otherwise-protected information or documents is inadvertent and shall not constitute a waiver of any claim or privilege or other protection.
5. HolRail objects to CSX's First Discovery Requests to the extent that they seek information and/or documents in a form that HolRail does not maintain in the ordinary course of business, or that are not readily available in the form requested by CSX, where such information and/or documents could be developed, if at all, only through a special study that HolRail objects to performing.
6. HolRail objects to CSX's First Discovery Requests to the extent that they seek information or documents that are not in HolRail's possession, custody or control, or otherwise kept by HolRail in the ordinary course of business.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

HolRail objects to the following definitions and instructions set forth in CSX's First Discovery Requests:

16. HolRail objects to CSX's definition of "identify" as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence to the

extent that it requires a person's home address and telephone number and any other personal information, including whether the person is "ill, disabled, incompetent or deceased."

19. HolRail objects to CSX's instruction no. 19 to the extent that it requires information or disclosure of documents that are protected by the attorney-client privilege, the attorney work product doctrine, the joint defense privilege, and/or any other applicable privilege or doctrine.

RESPONSES AND OBJECTIONS TO FIRST DISCOVERY REQUESTS

INTERROGATORIES

1. Identify the Person who reevaluated Holcim's rail transportation needs.

Objection: HolRail objects to this Interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Response: Subject to the foregoing objection, HolRail identifies the following persons:

Jeffery E. Bremer
Manager, Logistics Operations
Holcim (US) Inc.
1100 Victors Way
Ann Arbor, MI 48108
734-821-7092

Looman Stingo
Senior Vice President, Logistics
Holcim (US) Inc.
201 Jones Rd.
Waltham, MA 02451
781-647-2538

Allen Cast
Logistics Manager, Rail Services
Holcim (US) Inc.
1100 Victors Way
Ann Arbor, MI 48108
734-821-7092

2. Identify the end points of the Line.

Response: As of this time, HolRail has not identified the precise end points of the line of rail that it seeks to construct. Page 6 of HolRail's Petition and Exhibit A, thereto, describe and

indicate the approximate locations of the end points on the property of Holcim (US) Inc., (“Holcim”) and on the property of Giant Cement.

3. Identify the number of truckloads of cement shipped from the Holcim plant at Holly Hill in 2000, 2001, 2002, and 2003.

Objection: HolRail objects to this Interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, HolRail objects to the term “truckload,” as vague and ambiguous.

4. Identify the total annual number of rail cars proposed to be shipped to and from the Holcim plant at Holly Hill, SC in 2004, 2005, and 2006.

Objection: HolRail objects to this Interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

5. Identify the total annual number of rail cars proposed to be shipped to and from the Holcim plant at Holly Hill, SC in 2004, 2005, and 2006, via HolRail.

Objection: HolRail objects to this Interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

6. Identify the date of creation of each document produced in response to the following document requests. If the exact date of creation of the document is not known, identify whether it was created before or after the filing of the Petition on November 13, 2003.

Response: HolRail states that it will comply with this Interrogatory to the extent that the information requested is known and reasonably available to HolRail and to the extent that this Interrogatory does not impose an undue burden, in which case HolRail objects. The documents in the bates range HolRail 000001 to 000005, produced hereto, were created before November 12, 2003.

7. Identify the factors Holcim considered in reevaluating its rail transportation needs.

Objection: HolRail objects to this Interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Holcim also objects to this Interrogatory as vague and ambiguous and overbroad and unduly burdensome to the extent that “reevaluating its rail transportation needs” is not limited, qualified, or defined or related to anything other than to “Holcim,” which does not cure the inherent vagueness, ambiguity, overbreadth, and undue burden of this Interrogatory.

8. Identify the factors Holcim has used to determine that CXST provides “consistently poor service.”

Objection: HolRail objects to this Interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Holcim also objects to this Interrogatory as vague and ambiguous to the extent that it is not limited, qualified, or defined or related in anyway other than to “Holcim.”

Response: Subject to the foregoing objections, HolRail refers CSX to page 5 of the Petition.

9. Identify the point of connection between the line HolRail proposes to construct and the NS at Giant, SC.

Objection: HolRail objects to this Interrogatory as vague and ambiguous to the extent that “the NS at Giant, SC” is undefined.

Response: Subject to the foregoing objection and with the assumption that “the NS” refers to the Norfolk Southern Railway Company, HolRail refers CSX to its response to CSX’s Interrogatory no. 2.

10. Identify the Person who studied the feasibility of building the Line in the CSXT right-of-way.

Objection: HolRail objects to this Interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Response: Subject to the foregoing objection, HolRail has retained the following firm to develop construction plans for the Line:

Skeen Railroad Engineering
345 Parkway 575, Suite 208
Woodstock, GA 30188
770-928-9115

11. Identify the number of annual carloads that Holcim projects to transport outbound via rail upon reaching optimum production.

Objection: HolRail objects to this Interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

HolRail objects to this Interrogatory a vague and ambiguous and overbroad and unduly burdensome to the extent that “upon reaching optimum production” is not qualified, limited,

or defined in anyway, or related to anything, other than to “Holcim,” which does not remove the inherent vagueness, ambiguity, overbreadth, and undue burden.

Response: Subject to the foregoing objections, HolRail refers to page 4 of its Petition.

12. Identify the number of annual truckloads that Holcim projects to transport outbound upon reaching optimum production.

Objection: HolRail objects to this Interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. HolRail objects to this Interrogatory as vague and ambiguous and overbroad and unduly burdensome to the extent that “upon reaching optimum production” is not qualified, limited, or defined in anyway, or related to anything, other than to “Holcim,” which does not remove the inherent vagueness, ambiguity, overbreadth, and undue burden. HolRail also objects to the word “truckload” as vague and ambiguous.

13. Identify the third party consultant retained by HolRail in compliance with 49 C.F.R. § 1105.10(d).

Response: HolRail has not yet retained a third party consultant.

14. Identify the restrictions that CSXT imposes on Holcim’s use of private rail cars.

Objection: HolRail objects to this Interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Holcim also objects to this Interrogatory as vague and ambiguous and overbroad and unduly

burdensome to the extent that it is not limited, qualified, or defined or related in anyway to this proceeding.

15. Identify the locations where HolRail proposes to cross the CSXT track south of Holcim's Holly Hill facility for each alternative.

Objection: HolRail objects to this Interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Response: Subject to the foregoing objections, HolRail states that it has not yet definitively determined the necessity of crossing CSX's track.

16. Identify the dollar amount budgeted by HolRail or Holcim for construction of the Line.

Objection: HolRail objects to this Interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

17. Identify the Board resolutions of Holcim or HolRail authorizing expenditure of funds to construct the Line, the Eastern Line, or the Western Line.

Objection: HolRail objects to this Interrogatory as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

DOCUMENT REQUESTS

1. Produce all documents used to prepare the Petition.

Objection: HolRail objects to this Request to the extent that it seeks information or disclosure of documents that are protected by the attorney-client privilege and/or the attorney work product doctrine.

Response: Subject to the foregoing objection, HolRail states that it will produce responsive materials to the extent such materials exist.

2. Produce all documents used to respond to these discovery requests.

Objection: HolRail objects to this Request to the extent that it seeks information or disclosure of documents that are protected by the attorney-client privilege and/or the attorney work product doctrine.

Response: Subject to the foregoing objection, HolRail states that it will produce responsive materials to the extent such materials exist.

3. Produce all agreements granting HolRail or Holcim access to the land owned by a neighboring cement facility as discussed at page 6 of the Petition.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

4. Produce all construction plans for the Line, the Eastern Line, and the Western Line.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

5. Produce the study the [sic] HolRail refers to on page 6 of the Petition.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

6. Produce all documents relating to the service to be provided by NS discussed in the Petition.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

HolRail objects to this Request as overbroad and unduly burdensome.

7. Produce all documents that are the basis for the statement at page 5 of the Petition that CSXT's "service is unreliable and inadequate".

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

8. Produce all documents that are the basis for the statement at page 6 of the Petition that "Holcim has studied the dimensions of the corridor and concluded that construction and operation of HolRail's rail line parallel to the existing CSX line, within the CSX right-of-way, is feasible and would not affect CSX's operations."

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

9. Produce all engineering plans and all studies prepared since January 1, 1995 to build the Line over the “existing CSX rail corridor”, as stated on Page 6 of the Petition.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

REQUESTS FOR ADMISSIONS

1. Admit or deny that HolRail or Holcim has not conducted an on-site inspection of the CSXT right-of-way where HolRail intends to build the Line.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. HolRail objects to the term “on-site inspection” as vague and ambiguous.

2. Admit or deny that HolRail or Holcim has discussed the operation of the Line with NS.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

3. Admit or deny that HolRail or Holcim has not budgeted any funds to construct the Line in 2004.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

4. Admit or deny that HolRail or Holcim has not budgeted any funds to construct the Line in 2005.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

5. Admit or deny that HolRail or Holcim has not budgeted any funds to construct the Line in 2006.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

6. Admit or deny that the Line is only two miles in length.

Response: HolRail is unable to admit or deny this Request at this time because it has not determined the precise length of the Line.

7. Admit or deny that HolRail or Holcim has discussed operations over the facility at Giant with Giant Cement.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Holcim also objects to this Request as vague and ambiguous and overbroad and unduly burdensome to the extent that “operations over the facility at Giant” is not limited, qualified, or defined or related in anyway.

8. Admit or deny that there is an agreement for HolRail to operate over the property of Giant Cement.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

9. Admit or deny that HolRail does not intend to cross the CSXT track running south of the Holcim facility at Holly Hills.

Objection: HolRail objects to this Request as vague and ambiguous. HolRail requires clarification as to the meaning of “CSXT track running south of the Holcim facility at Holly Hills [sic].” Also, assuming that the relevant track is the CSX track between the facilities of Giant Cement and Holcim, the Request does not indicate whether it refers to HolRail’s preferred route, or its alternate route.

Response: Subject to the foregoing objections, HolRail is unable to admit or deny this Request because it has not definitively determined the necessity of crossing CSX’s track.

10. Admit or deny that HolRail intends to construct the Line parallel to the CSXT track south of Holcim’s Holly hill [sic] facility.

Objection: HolRail objects to this Request as vague and ambiguous. HolRail requires further clarification as to “the CSXT track south of Holcim’s Holly hill [sic] facility.”

Response: Assuming that this Request refers to the CSX track running north from the facility owned by Giant Cement to the facility owned by Holcim, HolRail admits that it intends to construct the Line roughly parallel to the CSX track.

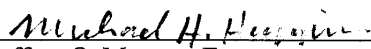
11. Admit or deny that the ground stability along the Line has been studied by HolRail or Holcim.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

12. Admit or deny that the ground stability along the Line has been inspected by HolRail or Holcim.

Objection: HolRail objects to this Request as irrelevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,


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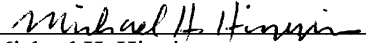
Counsel for HolRail LLC

December 18, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have served on this 18th day of December, 2003, a copy of HolRail LLC's Responses and Objections to CSX Transportation Inc.'s First Discovery Requests upon the following:

Louis E. Gitomer
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Michael H. Higgins