

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

Betty Jo Christian
202.429.8113
bchristian@step toe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202.429.3000
Facsimile 202.429.3902
www.step toe.com

206303
DID # 0102041001

(14-2) 408

October 1, 2002

via Hand Delivery

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

FEE RECEIVED

OCT 1 2002

**SURFACE
TRANSPORTATION BOARD**



**ENTERED
Office of Proceedings**

**Re: CAROLINA RAIL SERVICE, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
NORTH CAROLINA PORTS RAILWAY COMMISSION
AND NORTH CAROLINA STATE PORTS AUTHORITY
FINANCE DOCKET NO. 34256**

OCT 2 - 2002

Part of
Public Record

Dear Secretary Williams:

Enclosed for filing in the above referenced docket are the original and ten (10) copies of the Carolina Rail Service, LLC's Verified Notice Exemption. Simultaneous with this filing, the North Carolina State Ports Authority has filed a related Notice of Exemption and Motion to Dismiss in Finance Docket 34258.

A check in the amount of \$1,300 is enclosed to cover the filing fee.

This filing includes a color map as an exhibit.

Please date stamp the extra copy of this cover letter and return it to the messenger who delivered this filing.

Sincerely,

Betty Jo Christian
Betty Jo Christian

FILED

OCT 1 2002

**SURFACE
TRANSPORTATION BOARD**

Enclosures

WASHINGTON

PHOENIX

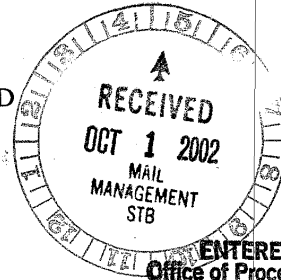
LOS ANGELES

LONDON

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34256

CAROLINA RAIL SERVICE, LLC
-- ACQUISITION AND OPERATION EXEMPTION --
NORTH CAROLINA PORTS RAILWAY COMMISSION
AND
NORTH CAROLINA STATE PORTS AUTHORITY



ENTERED
Office of Proceedings

OCT 2 - 2002

Part of
Public Record

FILED

OCT 1 2002

**SURFACE
TRANSPORTATION BOARD**

CAROLINA RAIL SERVICE, LLC
VERIFIED NOTICE OF EXEMPTION
FROM 49 U.S.C § 10902

FEE RECEIVED

OCT 1 2002

**SURFACE
TRANSPORTATION BOARD**

Carolina Rail Service, LLC (CRS), a Class III rail carrier, hereby files this Verified Notice of Exemption under 49 C.F.R. § 1150.41(a)(1) to acquire from the North Carolina Ports Railway Commission (PRC) a permanent and exclusive easement over certain rail lines and to operate over those lines pursuant to an operating agreement with the North Carolina State Ports Authority (SPA).¹ The subject railroad line extends from the connection with the Norfolk Southern Railway Company (Atlantic & East Carolina Railway) at milepost 0.0 in Morehead City to milepost 0.87 at Gallants Channel near Morehead City, a distance of .87 miles in Carteret County, NC, serving the intermediate stations of Marsh Island and Radio Island and includes all of the railroad tracks on the Port of Morehead City, whether denominated as spurs, side tracks, industrial tracks, or otherwise together with all of the PRC's yard and interchange tracks. The

¹ The impetus for this transaction is the enactment by the North Carolina legislature of SB1115, ratified September 20, 2002. Among other things, the new legislation requires the transfer of the PRC's assets and liabilities, except its common carrier obligation, to the SPA and the abolition of the PRC.

subject lines include approximately four miles of intra-terminal track at the Morehead City terminal over which CRS currently operates a terminal switching railroad.

CRS expects to consummate the above described transactions with the PRC and the SPA by November 20, 2002.

In support of this Verified Notice of Exemption and pursuant to 49 C.F.R. § 1150.43, CRS submits the following information:

- (a) Full name and address of applicant:

Carolina Rail Service, LLC
100 Terminal Road
State Port
Morehead City, NC 28557

- (b) Applicant's representative:

Karl Morell, Esq.
Ball Janik LLP
1455 F. St., NW Ste 225
Washington, DC 20005
202-638-3307

- (c) Statement of agreement:

CRS and PRC have tentatively reached agreement as to the terms of the permanent and exclusive easement over the subject lines. CRS and SPA have tentatively reached agreement as to the terms of a new operating agreement to permit CRS to operate common carrier service over the subject lines. Drafts of the agreement and the easement are attached to the SPA's Motion to Dismiss the Verified Notice of Exemption that was filed in Finance Docket 34258 concurrently with the filing of this Notice.

(d) The operator of the property:

CRS will operate the subject lines, pursuant to a permanent and exclusive rail operating easement and an operating agreement with the SPA.

(e) Brief summary of proposed transaction:

(1) Name and Address of Railroad Transferring Subject Property:

North Carolina Ports Railway Commission²
1717 Woodbine Street
Wilmington NC 28401

(2) Proposed time schedule for consummation of the transaction:

It is anticipated that the easement and the operating agreements will be executed no later than November 20, 2002, but in no event prior to the effective date of this Notice of Exemption.

(3) The mile-posts of the subject property, including any branch lines:

1. The railroad line extending from the connection with the Norfolk Southern Railway Company / North Carolina Railroad Company at Milepost 0.0 in Morehead City 28557 to Milepost 0.87 at Gallants Channel on Radio Island, Morehead City 28557, a distance of 0.87 miles, and including the spur track and consolidation tracks leading from said line, generally along Inlet Drive, to the industrial tracks on the property leased from the North Carolina State

² While exempt from regulation under the Interstate Commerce Act, PRC has a residual common carrier obligation. *See North Carolina Ports Railway Commission — Petition for Declaratory Order or Prospective Abandonment Exemption*, Finance Docket No. 31248 (ICC Decided Sept. 21, 1988).

Ports Authority to PCS Phosphate Company, Inc and the spur tracks leading to the PCS Phosphate Company, Inc. rail car dump and the "Fishmeal" spur on the area commonly known as Marsh Island, all in Carteret County, North Carolina; and

2. The railroad line extending from the connection with the Norfolk Southern Railway Company / North Carolina Railroad Company at Milepost 0.0 in Morehead City 28557, through and including the classification yard parallel to Highway 70 onto the Morehead City Port, and thus including all of the railroad tracks on said Port, whether denominated as spurs, side tracks, industrial tracks, or otherwise, all in Carteret County, North Carolina.

(4) The total route miles being acquired:

4.87, more or less.

(f) A map that clearly indicates the area to be served, including origins, terminal stations, cities, counties, and States:

See Exhibit A attached hereto.

(g) Revenue certification:

CRS's projected revenues do not exceed those that would qualify it as a Class III carrier. In addition, CRS's projected annual revenues will not exceed \$5,000,000. Therefore, 49 CFR § 1150.42(e) does not apply to this transaction.

(h) Environmental and historic preservation reporting requirements:

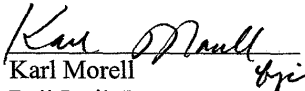
Under 49 C.F.R. § 1105.6(c)(2)(i), the proposed transaction is exempt from environmental reporting requirements. The transaction will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4)

or (5). Under 49 C.F.R. § 1105.8(b), the proposed transaction is also exempt from historic preservation reporting requirements.

(i) Caption summary:

A caption summary in the appropriate form is attached as Exhibit B hereto.

Respectfully submitted,


Karl Morell
Ball Janik LLP
1455 F. St., NW Ste 225
Washington, DC 20005
(202) 638-3307

Verification

I, Karen M. Godfrey, verify under penalty of perjury that I am Secretary of Carolina Rail Service, LLC, that the foregoing Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.41 is true and correct to the best of my knowledge and belief, and that I am authorized to verify this Notice on behalf of the Carolina Rail Service, LLC.


Karen M. Godfrey

Date: September 26, 2002

**MAP WILL BE SCANNED
AT A LATER DATE**

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 34256

CAROLINA RAIL SERVICE, LLC
-- ACQUISITION AND OPERATIONS EXEMPTION --
NORTH CAROLINA PORTS RAILWAY COMMISSION AND
NORTH CAROLINA STATE PORTS AUTHORITY

Carolina Rail Service, LLC (CRS), a Class III carrier, has filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire from the North Carolina Ports Railway Commission (PRC), a permanent and exclusive easement over certain rail lines and to operate over those lines pursuant to an operating agreement with the North Carolina State Port Authority (SPA). The subject railroad line extends from the connection with the Norfolk Southern Railway Company (Atlantic & East Carolina Railway) at milepost 0.0 in Morehead City to milepost 0.87 at Gallants Channel near Morehead City, a distance of .87 miles in Carteret County, NC, serving the intermediate stations of Marsh Island and Radio Island and including all of the railroad tracks on the Port of Morehead City, whether denominated as spurs, side tracks, industrial tracks, or otherwise, together with all of the PRC's yard and interchange tracks. The subject lines include approximately four miles of intra-terminal track at the Morehead City terminal over which CRS currently operates a terminal switching railroad.

Comments must be filed with the Board and served on Karl Morell, Ball Janik LLP, 1455 F. St., NW, Ste 225, Washington, DC 20005, (202) 638-3307.

This notice is filed under §1150.41. If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C.

10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: September __, 2002

By the Board

Vernon A. Williams
Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have on this 1st day of October, 2002, served copies of this Verified Notice of Exemption AND Motion to Dismiss by regular mail, postage pre-paid, on the following parties:

Apex Oil
P.O. Box 3127
Wilmington, NC 28406
Attn: John Joyner,
Terminal Manager

Boke Trading
810 Sunnyvale Drive
Wilmington, NC 28412
Attn: Robert Alston

Cape Fear Bonded
P.O. Box 292
Wilmington, NC 28402
Attn: William Stanfield

Cape Fear Bulk
2217 Jump'in Run
Wilmington, NC 28403
Attn: Eric Higgins

Carolina Rail Service
100 Terminal Road
State Port
Morehead City, NC 28557

CSX Transportation
P.O. Box 44057
Jacksonville, FL 32231
Attn: Director - Operations

Colonial Terminals, Inc.
Cape Fear Terminal
1002 South Front Street
Wilmington, NC 28401
Attn: Ronald G. Hart,
Terminal Manager

Flint Hills Resources
P.O. Box 3958
Wilmington, NC 28406
Attn: Cliff Ruark,
Terminal Manager

International Longshoreman's
Association, AFL-CIO
c/o Gleason & Mathews, P.C.
26 Broadway, 17th Floor
New York, NY 10004-1864

Nooter/Eriksen
1509 Ocello Drive
Fenton, MO 63026
Attn: Leo Deterding,
Mgr. of Transportation

Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-2191
Attn: Dr. Robert Martinez,
VP Ports & Development

North Carolina Department of
Transportation
1501 Mail Service Center
Raleigh, NC 27699-1501
Attn: David King,
Deputy Secretary, Transit

North Carolina Ports Railway
Commission
Attn: William Kincheloe, Chairman
516 Paul Street
PO Box 671
Rocky Mount, NC 27802

PCS Phosphate
PO Box 48
Aurora, NC 27806
Attn: Keith Thornton, General Manager

Rescar Companies
3333 River Road
Wilmington, NC 28412
Attn: Rex Greer

S&R Packing and Crating
P.O. Box 2551
Wilmington, NC 28402
Attn: Steve Thompson

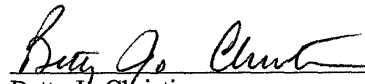
South Wilmington Terminal Exxon
P.O. Box 1350
Wilmington, NC 28402
Attn: Mike Mayhugh,
Terminal Manager

Touchstone Shipping and Logistics, Inc.
17350 S.H. 249, Suite 320
Houston, TX 77064
Attn: Lynn Stewart

U.S. Army Military Ocean Terminal
6280 Sunny Point Road
Southport, NC 28461
Attn: Brenda Hewett

Vopak Terminal Wilmington, Inc.
P.O. Box 896
Wilmington, NC 28402
Attn: Al Smeilus,
Terminal Manager

Wilmington Terminal Railroad
1717 Woodbine Street
Wilmington, NC 28401
Attn: Billy Tucker


Betty Jo Christian