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January 24, 2018

245054

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

ENTERED
Office of Proceedings
January 24, 2018
Part of
Public Record

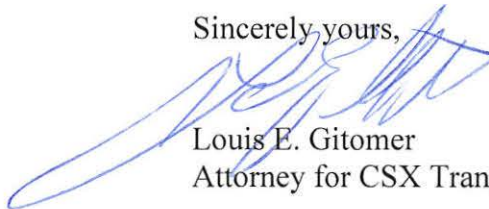
Re: **Docket No. AB-55 (Sub-No. 775X), CSX Transportation, Inc.—
*Abandonment—in Clark, Floyd, Lawrence, Orange, and Washington Counties,
IN***

Dear Ms. Brown,

Enclosed for efilings is CSX Transportation, Inc.'s Motion to Reject the Notice of Intent filed by Indianapolis Metropolitan Railway Company.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (SUB-NO. 775X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION— IN CLARK, FLOYD,
LAWRENCE, ORANGE, & WASHINGTON COUNTIES, IND.

CSX TRANSPORTATION, INC. MOTION TO REJECT

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: January 22, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (SUB-NO. 775X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION— IN CLARK, FLOYD,
LAWRENCE, ORANGE, & WASHINGTON COUNTIES, IND.

CSX TRANSPORTATION, INC. MOTION TO REJECT

CSX Transportation, Inc. (“CSXT”), pursuant to 49 C.F.R. § 1152.27 respectfully moves the Surface Transportation Board to reject the Notice Expressing Intent to File an Offer Of Financial Assistance (the “NOI”) filed on behalf of Indianapolis Metropolitan Railway Company (the “Metropolitan Railway”), for failing to comply with the requirements of 49 C.F.R. § 1152.27(c)(2). The NOI is for the entire approximately 62.3-mile rail line between milepost 00Q251.7 to 00Q314.0.

CSXT filed a Notice of Exemption on December 19, 2017 to abandon an approximately 62.3-mile rail line on its Northern Region, Louisville Division, Hoosier Subdivision between near Bedford, milepost 00Q251.7, and near New Albany, milepost 00Q314.0, all in Clark, Floyd Lawrence, Orange, and Washington Counties, IN (the “Line”). The Board served a Notice of Exemption. *CSX Transportation, Inc.—Abandonment Exemption—in Clark, Floyd, Lawrence, Orange, & Washington Counties, Ind.*, Docket No. AB 55 (Sub-No. 775X) (served January 8, 2018). Previously, CSXT had filed a Petition for Exemption on December 18, 2009 seeking an exemption to discontinue service over the Line. After holding a public meeting and concluding that there was a “lack of any current traffic on the line,” the Board granted the exemption. CSX

Transportation, Inc.—Discontinuance of Service Exemption—in Clark, Floyd, Lawrence, Orange, and Washington Counties, IN, STB Docket No. AB-55 (Sub-No. 698X) (served April 7, 2010) at 4. There has been no traffic on the Line for at least seven years.

CSXT has agreed to negotiate trail use for the Line with both Indiana Trails Use Fund, Inc., and the City of New Albany, Indiana, which would preserve the entire Line for future reactivation as a railroad line.

Metropolitan Railway has failed to comply with the Board’s rules for filing a NOI, specifically the preliminary financial responsibility requirement that must be met for the NOI to be accepted and for CSXT to provide financial information.

In 2015, the Board opened a proceeding to review the requirements for filing an offer of financial assistance (the “OFA”) in abandonment and discontinuance proceedings. In the Notice of Proposed Rulemaking, the Board stated

The Board is convinced that it makes sense to require offerors to demonstrate some degree of financial responsibility before requiring the railroads to turn over their financial information to offerors. However, the Board also recognizes that a potential offeror cannot be expected to make a full financial responsibility showing based on the value of a rail line without financial information from the carrier. Accordingly, as discussed in more detail in Section II, the Board proposes requiring potential offerors to make a minimal, preliminary financial responsibility showing, but one that does not require any information from the carrier beyond that provided in the notice, petition, or application for abandonment or discontinuance.

Offers of Financial Assistance, Docket No. EP 729 (served September 30, 2016), slip op. at 5.

The Board amended its rules governing OFA in *Offers of Financial Assistance*, Docket No. EP 729 (served June 29, 2017) (the “*OFA Decision*”), where it adopted a requirement that “a potential offeror be required to make a preliminary financial responsibility showing as part of the NOI.” *Id.* at 6 and 49 CFR 1152.27(c)(1)(ii). Not only was the offeror required to calculate the cost of the steel on the line, but also the projected costs of annual maintenance. *Id.* Once the

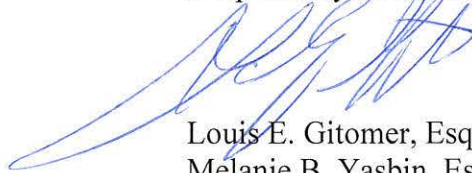
calculation is made, the Board requires a potential offeror to demonstrate that preliminary financial responsibility. 49 CFR 1152.27(c)(1)(ii) (Persons submitting an expression of intent to file an offer of financial assistance ... **must demonstrate** that they are financially responsible) (emphasis added).

Metropolitan Railway did not make the calculation and did not demonstrate that it is preliminarily financially responsible.

Although not a requirement for the NOI, Metropolitan Railway failed to demonstrate that there is a continued need for rail service on the Line. 49 CFR 1152.27(c)(1)(iv)(E) and (2)(i). CSXT discontinued service over the Line in 2010 because of lack of traffic and there has been no traffic on the Line for at least seven years.

The Board can reject a filing when it fails to comport with the Board's filing rules. *See Nevada Central Railroad—Exemption for Acquisition and Operation of Rail Service—in Elko and White Pine Counties, NV*, STB Docket No. FD-34773 (STB served Nov. 22, 2005). Based on the Metropolitan Railway's failure to comply with the specific rules requiring a demonstration of preliminary financial responsibility, CSXT respectfully requests that the Board reject the fatally defective NOI with prejudice and not require CSXT to turn over valuation information to Metropolitan Railway.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'L. Gitomer', is written over the typed name of Louis E. Gitomer.

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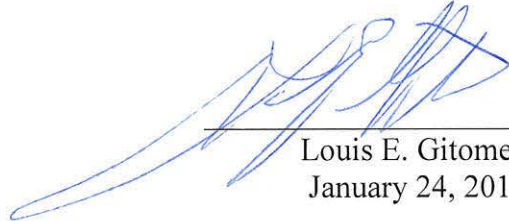
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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: January 24, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Motion to Reject to be served upon all parties of record by electronic service.



Louis E. Gitomer
January 24, 2018