

Columbus and Greenville Railway

P. O. Box 6000
Columbus, MS 39703

Cagyl

Transportation

213983

April 18, 2005

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K St. N.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings

MAY 16 2005

Part of
Public Record



Re: Finance Docket No. 34666, Columbus and Greenville
Railway Company – Verified Notice of Exemption – Acquisition and
Operation of 2.99 Miles of Newly Constructed Track in Greenwood, Leflore
County, Mississippi

Dear Secretary Williams:

Enclosed for filing please find the original and ten (10) copies of one document containing a Reply to Morris Recycling, Inc.'s Motion to Compel and separate Request for Expedited Handling of an incorporated Request for Extension of Time.

There is also enclosed an additional copy of this cover letter to stamp received.

If there are any difficulties with the filing documents please contact me at 410-467-2028.

Yours truly,

Wandaleen Poynter Cole

Wandaleen Poynter Cole
STB Counsel

enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

2/3983

**COLUMBUS AND GREENVILLE RAILWAY COMPANY
VERIFIED NOTICE OF EXEMPTION
ACQUISITION AND OPERATION OF APPROXIMATELY 2.99 MILES OF
NEWLY CONSTRUCTED TRACK IN GREENWOOD, LEFLORE COUNTY,
MISSISSIPPI**

Finance Docket No. 34666

**ENTERED
Office of Proceedings**

MAY 16 2005

**Part of
Public Record**

**Reply to Request of Morris Recycling, Inc.
Motion to Compel and to Its Further
Motion for Expedited Handling of its Request for Extension of Time**

Wandaleen Poynter Cole
STB Counsel
Columbus and Greenville Railway Company
201 19th Street North
Columbus, Mississippi 39703

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**COLUMBUS AND GREENVILLE RAILWAY COMPANY
VERIFIED NOTICE OF EXEMPTION
ACQUISITION AND OPERATION OF APPROXIMATELY 2.99 MILES OF
NEWLY CONSTRUCTED TRACK IN GREENWOOD, LEFLORE COUNTY,
MISSISSIPPI**

Finance Docket No. 34666

**Reply to Request of Morris Recycling, Inc.
For Expedited Handling of Its
Motion to Compel**

Comes now Columbus and Greenville Railway Company ("C&G") for the purpose of replying to the request of Morris Recycling, Inc. for Expedited Handling of its Motion to Compel.

C&G has made documents available to Morris in Columbus, Mississippi.

Morris should not be granted an extension of time. C&G has shown that Morris is without standing to participate in this proceeding. C&G has made its pertinent files available for copying. Morris will have an opportunity to use the documents in its anticipated attempt to prove standing in the abandonment exemption proceeding outlined in C&G's notice in this proceeding.

Morris Counsel, by indicating that it will file an amended Petition to Revoke whether its sees C&G discovery documents or not, has indicated that its real purpose is to delay. A valid basis for an Amended Petition to Revoke is apparently inconsequential.

C&G is not Refusing to Negotiate with Morris

C&G wants to complete the record of recent communications between C&G counsel and Morris counsel. It is particularly inappropriate that Morris continues to represent in its pleadings the position C&G is taking concerning common carrier service to its facility in Greenwood. C&G has no preconditions to negotiating with Morris on current rail service needs. Attached, as Exhibit A, is a letter of April 26, 2005 wherein Morris is informed of the condition of its track and asked to use its best economic judgment in determining whether it is to its advantage to upgrade the track for a short period of time. It should be noted C&G does state in the letter that it will keep its commitment to the City of Greenwood and file for abandonment on the City line. This was not an attempt to "bait and switch" or otherwise misrepresent. This was simply following up on the incident where two cars could not be placed without implementing safety measures.

C&G Does Require Some Commitment From Morris in Matters Relating to Restructuring its Abandonment Application

At Morris's request C&G has started the process of analyzing a request to leave a portion of the City line in place to serve the Morris Greenwood facility. To do this it would be essential that Morris withdraw its opposition to the Exemption Notice filed in

Finance Docket 34666. Morris needs to show good faith. It appears to C&G that Morris wants a commitment to keep a portion of track in place and the ability to oppose the abandonment, the acquisition and the ultimate exchange of the properties with the City of Greenwood.¹ C&G did not “bait and switch.” Counsel for Morris was told at the time it made the request that C&G management would have to consider the ramifications of the request. Since the response was not a simple “yes” C&G is accused of misrepresenting its intent.

Discovery

There has been no “bait and switch” on discovery either. Counsel for Morris has conceded that there must have been a miscommunication on May 3, 2005. C&G counsel left a conversation concerning discovery believing that that issue had been replaced with an effort to have a portion of track left in place and that the documents were not to be copied. Morris declined to view the documents in Mississippi. If Morris was so anxious to have the discovery documents it should not have allowed seven days to pass without contacting C&G.

Counsel for C&G reviewed and organized the documents on April 25, 2005. This step was taken so that access could be quickly made available if C&G’s Motion to Quash Discovery was denied. C&G firmly believes that a party without standing in a proceeding should be blocked from reviewing corporate documents regardless of the content. To avoid even more flow of paper, and obfuscation of issues, C&G released the paper to Morris on May 11, 2005. (*See*, Exhibit B).

¹ *See*, Exhibits C, D, E and F.

Morris Appears to be Delaying the Process for the Purpose of Delaying the Process

The avalanche of paper being produced on behalf of Morris is preventing any forward movement by C&G. Which I suppose means Morris is accomplishing its goal. It is important to note that Morris's first position in this proceeding was that it had a "strong legal interest in the legality of this proceeding." The second position, that it was a shipper, was based on the fact that two cars were routed by a third party to its Greenwood location. The facts surrounding the two cars actually undercut Morris's position since the tracks into the facility had apparently not been maintained for three years and the cars could not be safely placed without great care. The current approach is that C&G is misrepresenting, tactically "baiting and switching" and otherwise acting in an unethical manner. The letters attached to the Motion to Expedite are Morris's carefully crafted observations on the exchanges; Exhibits C, D, E and F complete the picture.

Morris has Chilled Thoughts of Attempting to Resolve Its Concerns

While C&G firmly believes that Morris is without any standing in this proceeding it realizes the importance of keeping its commitment to the City of Greenwood. However, any attempt to exchange information results in a new flood of documents and accusations. If there is no room for frank exchange and disagreement, the usual pull and tug of negotiations, C&G is cut off from even this avenue of resolution.

Morris Will Have Ample Opportunity for Requests for Additional Discovery in the Abandonment Docket

Every position taken by Morris, other than the paternal-like general interest in “legality,” stems from a concern about reestablishing use of rail common carriage. This is better addressed in an abandonment exemption proceeding. C&G feels it cannot negotiate with Morris. Morris’s focus is on delay not on resolution. Morris is well aware of the fact that it is stretching the resources of a Class III railroad operation to its full limits.

C&G respectfully requests that Morris Recycling, Inc.’s request for an extension of time to Amend Petition to Revoke be denied.

Respectfully Submitted,

A handwritten signature in black ink, reading "Wandaleen Poynter Cole". The signature is fluid and cursive, with the first name being the most prominent.

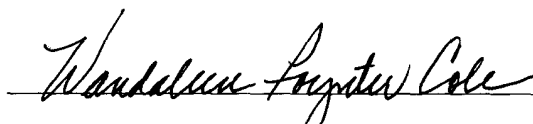
Wandaleen Poynter Cole
STB Counsel
Columbus and Greenville Railway Company
201 19th Street North
Columbus, Mississippi 39703

CERTIFICATE OF SERVICE

I hereby certify that May 11, 2005, a copy of Columbus and Greenville Railway Company's Reply to Request of Morris Recycling, Inc for Expedited Handling of its Motion to Compel, was served by First Class Mail, and facsimile, on:

Jeffrey O. Moreno
Thompson Hine LLP
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036-1600

Michael H. Higgins
Thompson Hine LLP
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036-1600


Wandaleen Poynter Cole

EXHIBITS A through F

**Columbus and Greenville
Railway Company**

201 19th Street North
Post Office Box 6000
Columbus, Mississippi 39703
Phone (662) 329-7710
fax (662) 329-7705

Exhibit A

File ✓ **CAGY**
Transportation

April 26, 2005

Mr. Jim Minga
Morris Recycling Inc.
304 West Bankhead Street
New Albany, MS 38652

Dear Mr. Minga:

Based on your recent statement of your intent to resume rail shipments at your Greenwood, MS facility, the condition of your track must be addressed. The arrival of the two empty cars to be placed into your Greenwood facility back in February 2005 took everyone at the C & G by surprise. There has been no use of the rail at your facility in a number of years, and therefore no reason to check on the condition of the lead track going into your facility or the adequacy of the track within your facility.

We made a preliminary assessment of the condition of the lead track and your leased track inside the gate. As scrap metal shipments vary greatly in weight and center of gravity, the track conditions must meet or exceed FRA Class I track standards.

We can provide only a rough estimate for the needs within your facility. If you would like for C & G to make a detailed engineering evaluation, we stand ready to do so. Based on a site evaluation made on the portion near the gate, there is the need for some twenty crossties to be installed, approximately forty tons of track ballast, spot surfacing to correct cross level problems, and cleaning of the track and work area. Additionally, the switch will need one-half set of #10 switch ties installed. We have estimated the costs of this work with a reputable railroad track contractor to be \$8,881.00.

Under the lease agreement, your company entered with C & G Railway in 1988, which has rolled over and is current, the costs of these maintenance repairs are the responsibility of Morris Recycling, Inc. Section 17 reads as follows:

Maintenance

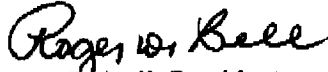
That portion of said side track lying within the bounds of the above Mentioned lease (306 feet, more or less) shall be maintained (including removal of dirt, woodchips, bark, ice, weeds, and debris and the maintenance of drainage ditches and structures) and renewed to the satisfaction of the Manager of the RAILWAY by the INDUSTRY at the sole cost and expense of INDUSTRY. The INDUSTRY shall also maintain areas adjacent to the side track in clear condition to provide walkways for the RAILWAY'S employees.

That portion of said track lying without the bounds of the above mentioned lease shall be maintained by RAILWAY so long as the RAILWAY determines that sufficient traffic is being generated to allow such maintenance to be economically feasible. In the event that sufficient traffic is not generated by said sidetrack to justify the maintenance of said turnout portion to be economically feasible and the INDUSTRY is desirous of continuing rail service, then, at the sole discretion of the RAILWAY, the RAILWAY shall, by written notice to the INDUSTRY, require the INDUSTRY to assume the cost of maintenance of said turnout portion for so long as the RAILWAY may deem such maintenance unprofitable.

C & G Railway intends to keep its commitment to the City of Greenwood to seek abandonment authority on a portion of its line through Greenwood. It is unclear at this point how long it will take to finalize that process. If, however, the economics appear to make it attractive to your company to make the necessary track repairs and resume using rail service for a potentially short period of time, we will be happy to work with you.

Please let me know if you want C & G to recommend contractors to price the repairs.

Sincerely,



Roger D. Bell, President
Chief Executive Officer

Exhibit B

FAX TRANSMISSION

To: Mr. Michael H. Higgins
Mr. Jeffrey O. Moreno
202-331-8330

From: Wandaleen Cole
Columbus & Greenville Railway Company
410-467-2936

**Re: COLUMBUS AND GREENVILLE RAILWAY COMPANY
VERIFIED NOTICE OF EXEMPTION
ACQUISITION AND OPERATION OF APPROXIMATELY 2.99 MILES OF NEWLY
CONSTRUCTED TRACK IN GREENWOOD, LEFLORE COUNTY, MISSISSIPPI**

Date: May 11, 2005
Time: 3:39p EDT

Acceptable dates for copying of documents in Columbus, Mississippi are May 12, 2005 (afternoon), May 13 and May 16. The documents will be in the offices of Columbus and Greenville Railway Company at 201 19th Street, Columbus, Mississippi 39703. When entering the offices you should ask for Mr. Lynn Gibson. The documents cannot leave the building and you will be supplied with a cost for using C&G resources. The local rate is not yet available to me. I will give you that information as soon as I get it.

This is a copy of the fax I sent at 3:39p EDT. Now, almost an hour later you send me a message indicating that you have made other arrangements on the copying that require the documents to be removed from the building.

I think the above message is clear. I know that I indicated early in our discussions that C&G executives do not want the documents taken out of the building. Can we resolve?

6:50p EDT

Please give me a date, since I haven't heard from you I am assuming you are not going to respond. Both of the executives I work with are out of the office and can't be reached at this hour. Hopefully I can work out a compromise and I would like to handle all matters dealing with the situation at one time. If I can get to Columbus I will travel with the copiers to make sure the documents are properly handled. That should satisfy my clients concerns.

FAX

**To: Jeffrey O. Moreno
Thompson Hine
202-331-8330**



Exhibit C

**From: Wandaleen P. Cole
Columbus and Greenville Railway Company
410-467-2936**

**Re: Morris Recycling, Inc. Renewed Shipping from
Greenwood, Mississippi on the C&G Railway Company**

Since I have developed laryngitis I am sending an e-mail instead of calling to respond to your suggestion that a portion of the track adjacent to Morris Recycling, Inc., currently proposed for abandonment, in Greenwood, Mississippi be left in place to serve your client.

My clients expressed confusion about the request since the abandonment application has not been filed and this matter should be discussed within that proceeding. There is further confusion about the hiatus in shipping since gasoline prices have only been at record highs for the last few months. I have, however, been authorized to make the following response:

C&G would be interested in developing business with Morris again. If Morris is serious about shipping on a long-term basis from Greenwood, C&G will approach the City of Greenwood about filing the abandonment application to cover all of the line except a portion needed to serve Morris, which would then be reclassified as industrial track. The approach to the City cannot be made without a substantive request from Morris. At a minimum C&G needs to know what volume commitments Morris will make and for what period of time. There is a wide range of other factors that would need to be resolved as well. C&G would also require that Morris withdraw from Finance Docket 34666 before it enters any negotiations about the Greenwood track.

Morris has no standing in the acquisition exemption proceeding or in the upcoming abandonment exemption proceeding. The prospect of developing revenue movements is the only reason for entertaining Morris's request.

Exhibit D



Columbus and Greenville Railway

*P. O. Box 6000
Columbus, MS 39703*

May 10, 2005

Via Fax 202-331-8330

Mr. Michael H. Higgins
Mr. Jeffrey O. Moreno
Thompson Hine
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036-1600

Gentlemen:

This responds to your letter of May 9, 2005. My faxed communication to you dealt with the question of leaving a piece of track in place. Leaving a piece of track in place would require the prior approval of the City of Greenwood. C&G could not approach the City without certainty that your client actually desired to move a level of traffic that justified such action. Please remember that your client has not shipped on C&G for over three years.

C&G has not refused to negotiate. C&G is eager to negotiate and would appreciate a contact that would allow it to do so. To negotiate there must be a second party involved and information to discuss. If your client is intending to ship from its Greenwood facility in the near future it is to its advantage to give C&G the information it needs to prepare for those shipments. C&G will serve your client; it is not and will not refuse to do so.

To repeat, C&G is not refusing to negotiate on common carrier services. Your request to C&G dealt specifically and only with leaving a portion of track in place not with any current service needs. C&G needs to have a level of comfort that your client has made its request in good faith. Your client was simply asked to take a step that would establish that it is actually interested in future rail shipments.

If I read your May 9, 2005 letter correctly you are now saying that even if C&G approached the City and had agreement that a portion of track could be left in place to serve your client, your client would still oppose the abandonment. This does not give C&G any feeling of comfort that your client is dealing in good faith.

As to discovery, I indicated I had reviewed the limited documents and segregated them for your review in Columbus, Mississippi. You responded that based on my representation that there were few documents you would like for C&G to copy them and send them to your offices. I indicated that I would need to talk to my client about how matters would be handled. You then raised the question of leaving a portion of track in place. I said I would look into that for you. You then said to "forget about copying the documents." The fact that you have now changed your mind does not mean that I have delayed you by an additional amount of time. If you now wish to view the documents please let me know.

I will be responding to your Motion to Compel. The question of an extension of time is apart from any document production. C&G is involved in the preparation of its environmental assessment. When the assessment is finalized and served on the required parties the application to abandon the City line will be filed.

Yours truly,

A handwritten signature in black ink, appearing to read "Wandaleen Cole". The signature is written in a cursive, flowing style.

Wandaleen Cole

Facsimile Message

Exhibit E

To: Jeffrey O. Moreno
Thompson Hine
202-331-8330

From: Wandaleen Cole
Columbus and Greenville Railway Company
410-467-2936

Date: May 10, 2005
Time: 6:08p EDT

Question: In the conversation we had within the last hour you indicated that your client's only requirement was to retain rail service at Greenwood and that a commitment to leave a portion of the track in place now proposed for abandonment would respond to the concerns that brought your client to the point of filing the Petition to Revoke.

I would like to convey that information to my client, but since you and I have difficulty communicating, could you please put that position in writing and fax it back to me today. If you require expedited handling I need to get that information to C&G as soon as possible. Today is the first time you had indicated that leaving a portion of track in place would satisfy the requirements of your client.

Anticipating what you may raise as a concern, I will say, on behalf of my client, that if the track is left in place there is no question that common carrier service will be provided.

Facsimile Message

To: Jeffrey O. Moreno
Thompson Hine
202-331-8330

From: Wandaleen Cole
Columbus and Greenville Railway Company
410-467-2936

Date: May 10, 2005
Time: 6:51p

You have asked whether I was softening my position on pre-conditions to negotiations. I was trying to draw a distinction between our discussions concerning future rail service and current rail service. Your letters all seem to indicate that C&G is refusing to talk to Morris now about current shipments. That is not true. C&G will entertain any communication from Morris about shipments it will receive before the abandonment is consummated.

If C&G approaches the City and gets approval to leave a portion of track in place to serve Morris's long-term future needs, we believe it would expect Morris to withdraw from the matter completely. Morris would be getting what it asked for. C&G should be in a position to say that to the City. If Morris intends to get a commitment from C&G to keep a portion of track in place but still remain in Finance Docket 34666 and oppose the Docket 297 abandonment C&G cannot work with you. There is no reason for C&G not to continue its current path before the STB.

Since you have hedged by saying that keeping the track in place is Morris's "principle" desire, I must assume there are other desires that you are not stating. If you can give me a complete statement on Morris's requirements I might be able to progress some meaningful discussions. There is a high level of distrust. Until we know the totality of your position we are essentially working in the dark.

You have left us empty handed. We have nothing to offer the City. Can you give me an "if you X we will Y" statement?

To avoid any further misunderstandings, I want to make it clear that I am agreeing only to take the information to my client. My client will make the decision on whether or not to present a proposal to the City of Greenwood.