

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**CHICAGO, ROCK ISLAND & PACIFIC)
RAILROAD, LLC – ALTERNATIVE)
RAIL SERVICE – C&J RAILROAD)
COMPANY)**

**FIANCE DOCKET
NO. 36292**

**ENTERED
Office of Proceedings
April 22, 2019
Part of
Public Record**

**RESPONSE TO PETITION FOR PRESCRIPTION OF ALTERNATIVE RAIL SERVICE
UNDER 49 U.S.S. § 11123(A) AND 49 C.F.R. § 1146.1**

C&J RAILROAD COMPANY
111 Quarter Master Court
Jeffersonville, Indiana 47130

Respondent

B. Lyle Robinson
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DATE FILED: April 22, 2019

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SURFACE TRANSPORTATION BOARD**

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RAILROAD, LLC – ALTERNATIVE)	FIANCE DOCKET
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UNDER 49 U.S.C. § 11123(A) AND 49 C.F.R. § 1146.1**

Respondent C&J Railroad Company (“C&J Railroad”) hereby responds to Chicago, Rock Island & Pacific Railroad, LLC’s (“CRIP”) Petition for Prescription of Alternative Rail Service under 49 U.S.C. § 11123(A) AND 49 C.F.R. § 1146.1 (“Petition”) over 1,320 feet (0.25 miles) of rail line that extents between point of connection Illinois Central Railroad Company at or near Swan Lake, Mississippi (Milepost 104.0) and Milepost 103.75 (the “Segment”), and states as follows:

I. INTRODUCTION

C&J Railroad began leasing the Rail Line from Coahoma County, Mississippi (“Coahoma County”) on July 1, 2001 and continued operations over the Rail Line until the most recent lease agreement was terminated effective February 8, 2019. In 2005, C&J Railroad obtained authority from the STB to operate over the Segment. In the Petition, CRIP seeks to take over C&J Railroad’s authority to operate over the Segment and, in doing so, makes false and defamatory remarks regarding C&J Railroad with no basis in fact. C&J Railroad has never objected to CRIP operating over the Segment. Rather, C&J Railroad only responded to CRIP’s Application for authority due to incorrect statements regarding C&J Railroad. Due to the false and disparaging remarks made by CRIP in its Petition, C&J Railroad feels compelled to submit this Response to the Petition. Despite CRIP’s assertion to the contrary, C&J Railroad and its principal are not disgruntled and

are not on a crusade to prevent CRIP from obtaining authority to operate over the Segment. In fact, C&J Railroad is willing to work to facilitate the transfer of the operating authority to CRIP under the proper terms.

II. RESPONSE

Coahoma County has purportedly leased the Rail Line to CRIP. CRIP has asserted that C&J Railroad refuses to permit CRIP to operate over the Segment and the C&J Railroad will not permit CRIP to serve shippers whose rail cars are stranded on the Rail Line. C&J Railroad disputes this assertion, as it has never refused to permit CRIP to operate over the Segment. In fact, C&J Railroad is willing to negotiate the transfer of its authority to CRIP or to share joint operation with CRIP over the Segment. Moreover, the reason that CRIP has been unable to serve the shippers is because CRIP has failed to obtain operating authority from the STB through no fault of C&J Railroad.

CRIP takes exception to the fact that C&J Railroad did not file a Notice of Exemption in STB Finance Docket No. 34673 until April 7, 2005 and that it gave no explanation as to why nearly four years had passed since C&J Railroad entered a lease to operate over the Rail Line or why it sought STB authority to operate over the Segment. The reason for this is straightforward – no explanation was needed at the time C&J Railroad sought authority because all interested parties were fully aware of the issues that had caused the passage of four years without operating authority and as to why C&J Railroad sought operating authority from the STB.

C&J Railroad acknowledges that it referred to the Segment as “terminal and switching tracks” and as “lead, yard, and switching tracks without assigned mile posts” in its Notice to the STB. C&J Railroad further acknowledges that terminal and switching tracks were, in fact, beyond

the limits of the Segment.¹ At no time during the fourteen years of operation between 2005 and 2019 did any party appear to challenge C&J Railroad's authority to operate over the Segment.

CRIP further asserts that the sole reason that C&J Railroad obtained STB authority to operate over the Segment was to use that authority to block other rail carriers from providing service over the Rail Line. This assertion is without any foundation or merit. Indeed, the explanation is quite simple. C&J Railroad began operations on the Rail Line in 2001 without STB authority. This was due to Coahoma County's requirement, which was a provision of the lease, that C&J Railroad not seek operating authority from the STB. Coahoma County desired that the Rail Line remain in an abandoned status. CN cooperated with this unusual arrangement until 2005 when the CN required C&J Railroad to make interchange through Railinc using 418 messages. Thus, the only way C&J Railroad could have access to the Railinc system was to become a rail carrier. That notwithstanding, C&J Railroad's authority does not preclude other companies from petitioning for authority to operate on the Segment of track for the same purposes of interchange with CN. C&J Railroad and CRIP may each have their own authority to operate concurrently on the Segment.

C&J Railroad has attempted to reach a resolution of the issues asserted by CRIP through negotiations. During that time, there was a single phone call between counsel for CRIP and the principal of C&J Railroad. In addition, there was an exchange of correspondence between C&J Railroad and CRIP. In that regard, C&J Railroad wrote CRIP with an offer to resolve the issues. In response CRIP stated that it would not respond and that it would move forward with avenues of

¹ C&J Railroad disputes that the photograph attached to the Petition as Appendix 3 is a photograph of the Segment at issue here. Rather, the photograph depicts the main line of the Rail Line facing southward toward Swan Lake at the Albin Gin which is located in the vicinity of Mile Post 101.8, approximately three miles from the Segment.

legal relief available to it. C&J Railroad continues to be willing to work an amicable resolution to the issues asserted by CRIP. However, CRIP decided to take the unusual route of filing this Petition herein.

Robert Riley's assertion in his Verified Statement that C&J Railroad refuses to relinquish its operating authority has caused the listed customers on the Rail Line to be without service since February 8, 2019, is wholly without merit. Riley's assertion ignores the fact that C&J Railroad's authority to operate over the Segment does not preclude CRIP from obtaining operating authority over the Segment. Moreover, Riley's allegation that C&J Railroad has not fulfilled its contractual obligations is without any basis in fact. CRIP is not a party to the lease between C&J Railroad and Coahoma County and, accordingly, C&J Railroad does not have any contractual obligation to CRIP pursuant to the lease.

Finally, Riley's statements about C&J Railroad's alleged motivations for its actions are not proper for its Petition to the STB. When CRIP applied for authority to operate the railroad, there were four discrepancies in the application. The most glaring misstatement was that "[a]n agreement has been reached between the County, ROCK and MSD (the abbreviation used in the document to refer to C&J) for a change of operators on the rail line from MSD to ROCK." There was no such agreement between C&J Railroad and CRIP and this issue was raised with the STB by C&J Railroad. In any event, regardless of what motivations C&J Railroad may have, nothing prevents CRIP from obtaining authority to operate over the Segment.

For the reasons set forth in this Response to the Petition, in the event there is any doubt as to whether to grant the relief requested in the Petition, C&J Railroad suggests that, the parties be ordered to reasonable mediation of this matter.

III. CONCLUSION

C&J Railroad and its principal are not disgruntled and are not on a crusade to prevent CRIP from obtaining authority to operate over the Segment. C&J Railroad is willing to work to facilitate the transfer of the operating authority to CRIP under the proper terms. Moreover, CRIP does not need C&J Railroad's permission to operate over the Segment. However, CRIP should be required to follow the proper procedure to obtain its authority without using tactics of making disparaging and defamatory remarks regarding C&J Railroad.

This, the 22nd day of April, 2019.

Respectfully submitted,

/s/ B. Lyle Robinson

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Attorneys for C&J Railroad Company

CERTIFICATE OF SERVICE

I hereby certify that I have this date filed through Surface Transportation Board, a true and correct copy of the above and foregoing document which notified the following:

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 South LaSalle Street, Suite 1666
Chicago, Illinois 60604-1228

This, the 22nd day of April, 2019.

/s/ B. Lyle Robinson

B. Lyle Robinson