

October 30, 2007

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-00001



220594

Re Docket No. AB-1010
Petition for Reconsideration
CSX Corporation, Adverse Abandonment in Shelby County, Tennessee

Dear Secretary Williams

Enclosed please find the original plus ten copies of Memphis Community Connector's *Petition for Reconsideration, CSX Corporation, Adverse Abandonment in Shelby County, Tennessee*. A check in the amount of \$300.00, made payable to the Secretary, Surface Transportation Board, is also enclosed to cover the related filing fee.

One additional copy of this filing is enclosed for stamping and return to our offices.

Should you have any questions, please do not hesitate to contact me.

Sincerely,


Nicholas J. DiMichael
Attorney for Memphis Community Connector

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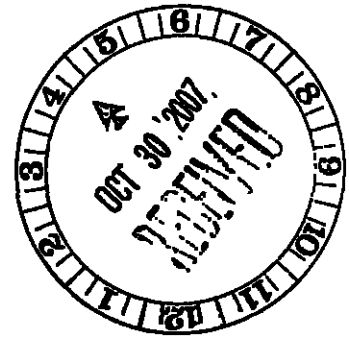
OCT 30 2007

**SURFACE
TRANSPORTATION BOARD**

LWP 1924111

Nicholas DiMichael@ThompsonHine.com Phone 202 263 4103 Fax 202 331 8330

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Docket No AB-1010

CSX TRANSPORTATION, INC

ADVERSE ABANDONMENT—IN SHELBY COUNTY, TN

220594

PETITION FOR RECONSIDERATION

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Nicholas J DiMichael
Jeffrey O Moreno
Laurence W Prange
Thompson Hinc LLP
1920 N Street, N W . Suite 800
Washington, D C 20036
(202) 263-4103
Attorneys for Memphis Community Connector

Dated October 30, 2007

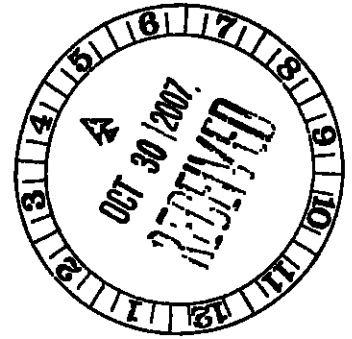
BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No AB-1010

CSX TRANSPORTATION, INC

ADVERSE ABANDONMENT—IN SHELBY COUNTY, TN

PETITION FOR RECONSIDERATION



Pursuant to 49 C F R § 1115.3, Memphis Community Connector ("MCC") hereby respectfully submits this Petition for Reconsideration of the Board's October 10, 2007 decision in this proceeding ("Decision").¹ In the Decision, the Board granted in part and denied in part, exemption and waiver requests related to a third-party or "adverse" abandonment application MCC intends to file. MCC respectfully requests that the Board reconsider the part of its decision that denies MCC's request for a waiver of the requirements of 49 C F R § 1152.22(b).

I. Background

MCC filed a petition with the Board, on April 26, 2007, requesting exemptions from several statutory provisions and waivers of certain Board regulations in connection with a planned filing of a third-party application for the adverse abandonment of an unused rail line of CSX Transportation, Inc. ("CSXT"), known as the "Cordova Branch," in order to establish a

¹ Although abandonment proceedings instituted under 49 U.S.C. 10903 are governed by separate appellate procedures exclusive to those proceedings, MCC submits this Petition for Reconsideration under 49 C F R § 1115.3 because MCC has not yet instituted an abandonment proceeding, but instead has simply instituted an administrative proceeding through its petition for waiver and exemption. (See 49 C F R § 1115.1). Furthermore, the appellate procedures described within 49 C F R Part 1152 do not provide a process for appealing a Board decision in a waiver and exemption request.

public trail on the railroad's right-of-way CSXT filed a reply on June 26, 2007, opposing nearly all of MCC's exemption and waiver requests

Subsequently, however, CSXT filed a Verified Notice of Exemption for voluntary abandonment of the Cordova Branch line on August 21, 2007 See, CSX Transportation, Inc. - Abandonment in Shelby County, Tennessee, Docket No AB-55 (Sub-No 684X) Although CSXT withdrew its Notice in a letter to the Board dated August 23, 2007, it asked the Board to reinstate its Notice in a September 7, 2007 letter In response to CSXT's voluntary abandonment, MCC has decided to defer filing an adverse abandonment application while it pursues its trail objective through the rails-to-trails process

However, in order to ensure CSXT's abandonment of the Cordova Branch line occurs in a timely fashion, MCC submitted a letter to the Board on September 12, 2007, requesting that the Board proceed to issue a decision on MCC's Petition for Waiver and Exemption in this proceeding, so that MCC would be in a position to file its adverse abandonment application promptly, if and when necessary In the Decision, the Board granted most of MCC's exemption and waiver requests, but denied MCC's request for a waiver of the requirements of 49 C F R § 1152.22(b)

II. The Board's Denial of MCC's Waiver Request Is Inconsistent with Precedent.

Section 1152.22(b) would require MCC to present the following information on the condition of the Cordova Branch

(b) Condition of properties The present physical condition of the line including any operating restrictions and estimate of deferred maintenance and rehabilitation costs (e.g., number of ties that need replacing, miles of rail that need replacing and/or new ballast, bridge repairs or replacement needed, and estimated labor expenses necessary to upgrade the line to minimum Federal Railroad Administration class 1 safety standards) The bases for

the estimates shall be stated with particularity, and workpapers shall be filed with the application

The Board has consistently granted requests for waiver of this section in adverse abandonment proceedings because the information required “is generally not available to an adverse abandonment applicant ” Sec. East St Louis Jct R R Co —Adverse Abandonment—In St Clair County, IL, STB Docket No AB-838, at 5 (served June 30, 2003) (“St Clair County”) See also, Seminole Gulf Railway, L P – Adverse Abandonment – In Lee County, FL, STB Docket No AB-400 (Sub-No 4), at 4 (Served June 9, 2004) (“Seminole Gulf”)

Similarly, this information is not available to MCC, and the Board has offered no explanation as to how MCC could obtain it The only apparent way for MCC to obtain this information is through extensive discovery that would grant MCC access to CSXT’s property and records in order to perform thorough inspections and to prepare the fully documented analyses required by Section 1152 22(b) But clearly this option cannot render such information “generally available” to MCC, within the meaning of Board precedent, since this option has not been considered to render such information generally available to other adverse abandonment applicants to whom the Board has granted a waiver

Furthermore, this alternative would impose overly burdensome requirements upon MCC that will be costly and time-consuming while serving no substantive purpose in this proceeding The Cordova Branch has been out of service since March 1, 2001, when CSXT embargoed the line to avoid unsafe operations over two bridges See, Bolen-Brunson-Bell Lumber Company, Inc v CSX Transportation, Inc, STB Finance Docket No 34236 (STB served May 15, 2003) In holding that the embargo was reasonable, the Board found, based upon extensive cost

evidence filed by CSXT,² that the Cordova Branch “required substantial work at substantial cost before safe operation would have been possible ” There is no reason to require MCC to prepare an independent analysis to show what CSXT already has proven to the satisfaction of the Board

Accordingly, the only plausible purpose for requiring the submission of the information identified at 49 C F R § 1152 22(b) is to ensure the information is available to parties who may be interested in submitting an offer of financial assistance (“OFA”) pursuant to 49 U S C § 10904 The Board, however, already has granted MCC a waiver of the OFA requirements Thus, the only reason for requiring the information identified at 49 C F R § 1152 22(b) has been eliminated in this proceeding

It would be particularly anomalous to require MCC to provide the information required by Section 1152 22(b) now that CSXT itself has filed a Notice of Exemption to voluntarily abandon the Cordova Branch in Docket No AB-55 (Sub-No 684X) CSXT has proceeded under the class exemption procedures at 49 C F R § 1152 50, which do not require it to provide any of this cost information that the Board’s Decision would require MCC to present It is certainly much easier for CSXT, as the owner of the rail line, to obtain the information being asked of MCC, yet CSXT is not obligated to obtain and submit that information at all, while MCC is required to do so The Board should correct this anomaly

Board precedent consistently has granted waivers of Section 1152 22(b) in adverse abandonment proceedings The rationale underlying those waivers remains equally valid to MCC, and the Board has not explained how or why MCC could or should obtain this information Nor has the Board explained why such information is relevant to MCC’s adverse abandonment request in light of the Board’s decision to waive the OFA requirements in this proceeding

² See, Reply of CSX Transportation Inc, in Bolen-Brunson-Bell Lumber Company, Inc v CSX Transportation Inc, STB Finance Docket No 34236 (filed Nov 25, 2002)

Therefore, in order to remain consistent with its precedent, the Board should grant MCC's waiver request

III. The Board Denied MCC's Waiver Request Based on a Materially Incorrect Assumption

The Board stated, as its sole reason for denying MCC's request for waiver of Section 1152 22(b), that

Because petitioner intends to use the condition of the Line to support its application, the request to waive section 1152 22(b) will be denied

Decision at 5 But MCC has never asserted that it intends to use the condition of the Cordova Branch to support its application for adverse abandonment and the Board has not cited to any place where MCC made such an assertion Rather, the Board merely noted that "CSXT argues that, *if petitioner is going to use the condition of the Lines to support its abandonment application*, then it should have to submit evidence of the physical condition of the property, as required under section 1152 22(b) " *Id* [emphasis added] The Board's denial of MCC's waiver request incorrectly converts CSXT's conditional statement into a conclusive fact

While MCC noted in its petition that the Cordova Branch is in poor condition, MCC will not base its adverse abandonment application upon the condition of the line Rather, MCC will base its application upon the continued disuse of the rail line The fact remains, however, that CSXT itself has asserted that the rail line is in very poor condition and that the Board has held that the line requires substantial work at substantial cost Accordingly, MCC will urge the Board to consider CSXT's own assertions and the Board's own holding when it weighs the benefits and burdens of approving an adverse abandonment application

IV. Conclusion

MCC respectfully requests the Board to reconsider its decision and grant MCC's request for a waiver of the requirements of 49 C F R § 1152 22(b). A waiver of these requirements is consistent with Board precedent and relieves MCC from obtaining wasteful and costly information that is unnecessary to ensure the public convenience and necessity are met.

Respectfully submitted,



Nicholas J. DiMichael
Jeffrey O. Moreno
Laurence W. Prange
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036
(202) 263-4103
Attorneys for Memphis Community Connector

Dated October 30, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 2007, a copy of the foregoing "Petition for Reconsideration" was served by first class mail upon all parties of record



Laurence Prange