



April 14, 2005

Via Hand Delivery

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

RE: Finance Docket No. 34666, *Columbus and Greenville Railway Co. – Verified Notice of Exemption – Acquisition and Operation of 2.99 Miles of Newly Constructed Track in Greenwood, Leflore County, MS*

Dear Secretary Williams:

Please find enclosed the original and ten (10) copies of the following: (1) Morris Recycling, Inc.'s Petition for Leave to File a Reply to a Reply; and (2) Reply of Morris Recycling Inc. for filing in the above referenced proceeding. Please note that the verification page of Mr. James M. Minga is not the original signature, it is a PDF version. Once received, the original page will be filed. Also enclosed is one diskette with a copy of the Petition and Reply in PDF format.

An extra copy of Petition and Reply is enclosed for stamping and returning to our offices.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

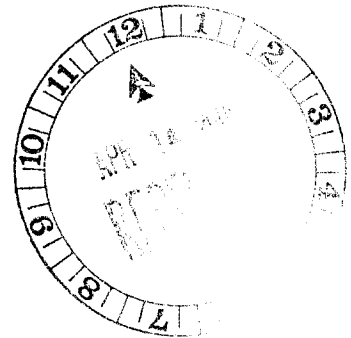
Sincerely,

Jeffrey O. Moreno
Michael H. Higgins
Attorneys for
Morris Recycling Inc.

ENTERED
APR 14 2005
Public Record

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



APR 14 2005
F. S. B. DOCKET

FINANCE DOCKET NO. 34666

COLUMBUS AND GREENVILLE RAILWAY CO.
—VERIFIED NOTICE OF EXEMPTION—
ACQUISITION AND OPERATION OF 2.99 MILES OF NEWLY
CONSTRUCTED TRACK IN GREENWOOD, LEFLORE COUNTY, MS

**MORRIS RECYCLING INC.'S
PETITION FOR LEAVE TO FILE A REPLY TO A REPLY**

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1920 N Street, N.W.
Suite 800
Washington, D.C. 20036-1600

*Attorneys for
Morris Recycling, Inc.*

Dated: April 14, 2005

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34666

COLUMBUS AND GREENVILLE RAILWAY CO.
—VERIFIED NOTICE OF EXEMPTION—
ACQUISITION AND OPERATION OF 2.99 MILES OF NEWLY
CONSTRUCTED TRACK IN GREENWOOD, LEFLORE COUNTY, MS

**MORRIS RECYCLING INC.'S
PETITION FOR LEAVE TO FILE A REPLY TO A REPLY**

Morris Recycling, Inc. ("Morris"), by and through its undersigned counsel, hereby submits this Petition for Leave to File a Reply to a Reply, pursuant to 49 C.F.R. § 1117.1. In this Petition, Morris establishes that good cause exists for the Board to waive application of 49 C.F.R. § 1104.13(c) because the "Reply of Columbus and Greenville Railway Company to Emergency Petition to Stay and Petition to Revoke Exemption—Morris Recycling Inc." offered factual information that Morris could not have known about; new arguments that Morris could not have anticipated; and material misrepresentations that Morris could not have expected, at the time it filed its Emergency Petition to Stay and Petition to Revoke Exemption.¹ Morris's tendered reply therefore will provide a full and fair discussion of the facts and arguments offered by the Columbus and Greenville Railway Company ("C&G") and will not broaden the issues raised in this proceeding.

¹ For clarity, Morris will refer to C&G's "Verified Notice of Exemption" as "C&G's Notice"; to its own "Emergency Petition to Stay and Petition to Revoke Exemption" as the "Emergency Petition"; to C&G's "Reply of Columbus and Greenville Railway Company to Emergency Petition to Stay and Petition to Revoke Exemption—Morris Recycling Inc." as "C&G's Reply"; and to its own "Reply to the Reply of Columbus and Greenville Railway Company to Emergency Petition to Stay and Petition to Revoke Exemption—Morris Recycling Inc." as "this Reply." The instant "Petition for Leave to File a Reply to a Reply" is referred to as "Petition for Leave."

I. THE LEGAL STANDARD FOR ALLOWING A REPLY TO A REPLY

The Board will waive the prohibition on a reply to a reply in appropriate circumstances. STB Docket No. AB-369 (Sub-No. 3X), Buffalo and Pittsburgh Railroad, Inc.—Abandonment Exemption—In Erie and Cattaraugus Counties, NY, Slip Op. at 2 (Served Sept. 17, 1998). Generally, the Board has applied a good cause standard when considering whether to allow a reply to a reply. See Delaware and Hudson Railway v. Consolidated Rail Corp.—Reciprocal Switching Agreement, 9 I.C.C. 2d 989, 990 (1993) (“Delaware and Hudson”). In particular, the Board has permitted a reply to a reply “[i]n the interest of a complete record.” STB Finance Docket No. 34041, Arizona Electric Power Coop. v. BNSF, 2001 STB Lexis 986 (Served December 26, 2001). The Board has also allowed a reply to a reply where the initial reply raised new arguments or evidence. STB Docket No. 41989, Potomac Electric Power Co. v. CSX Transportation, Inc., 1997 STB Lexis 137 (Served June 27, 1997) (“Pepco”).

II. THE BOARD SHOULD WAIVE APPLICATION OF 49 C.F.R. § 1104.13(c) IN ORDER TO ALLOW MORRIS THE OPPORTUNITY TO RESPOND TO C&G’S NEW EVIDENCE, ARGUMENT, AND MISREPRESENTATIONS.

Morris has good cause for submitting a reply to C&G’s Reply because C&G has offered new evidence, new argument on its own behalf and on behalf of the City of Greenwood, MS (“the City”), and made significant misrepresentations as to Morris’s status as a shipper on its main line railroad track through the City. For example, C&G offered new evidence in the form of Exhibits A through G to its Reply, consisting of over 150 pages of documents purportedly relating to the construction of the by-pass track and the abandonment of the main line through the City. Most of this information was unavailable to Morris at the time Morris filed its Emergency Petition. In fact, on or about April 1, 2005, Morris served its First Discovery upon C&G in order to obtain information regarding the construction of the by-pass line and the

arrangement between C&G and the City, including some of the information attached as exhibits. (Morris's First Discovery is attached hereto, as Exhibit A.) Additionally, Morris could not anticipate that C&G would materially misrepresent Morris's status as a shipper on the main line track, including its failure to discuss its troubling refusal to transport two railcars to Morris's Greenwood recycling facility in February 2005. Indeed, much of C&G's Reply argument is predicated upon misrepresentations about Morris's recent need for rail transportation. In support of its Reply to C&G, Morris offers the Verified Statement of James M. Minga ("Minga V.S."), which explains the disturbing circumstances of C&G's abusive refusal to serve the Greenwood facility, unless Morris executed a verified statement, drafted by C&G, for submission to this Board in support of C&G's abandonment of its main line track. Finally, C&G's Reply exceeded the issues raised in Morris's Emergency Petition by seeking to obtain the Board's retroactive approval of the City's underlying rail construction project under the standards of 49 U.S.C. § 10502(a). Morris deserves the opportunity to respond to such arguments.

Precedent supports the Board's waiver of 49 C.F.R. § 1104.13(c) and its acceptance of Morris's reply to a reply. For example, in Delaware and Hudson, the Commission considered whether, as a preliminary procedural matter, to accept Conrail's reply to DHRC's opposition to Conrail's petition to vacate an earlier decision of the Commission. *Id.* at 989-90. The ICC noted that, under its rules of practice, a reply to a reply is not permitted; however, it observed, "we may waive the rule for good cause." *Id.* at 990 (citing 49 C.F.R. §§ 1110.9 and 1100.3) Based on Conrail's assertion that DHRC's opposition "seriously distort[ed] the circumstances and import" of the Commission's prior decision and that it "could not have anticipated the arguments" raised in DHRC's opposition when it filed its petition, the ICC allowed Conrail's reply.

Here, C&G has misrepresented Morris's status as a shipper on the main line track through the City and has offered argument predicated upon its distorted version of the facts. Nowhere in its papers does C&G mention the February 2005 shipments or its extortionist demand for a signed statement in support of its abandonment as quid pro quo for delivery of the railcars. Under Delaware and Hudson, Morris clearly has good cause to file its Reply in order to address C&G's new evidence and argument.

C&G's submission of additional factual information, in more than 150 pages of exhibits, provides Morris with a "compelling reason" for submitting its reply to a reply. In Pepco, the Board considered CSXT's request for leave to reply to Pepco's opposition to CSXT's motion for partial dismissal. Id. at *2. The Board acknowledged that in previous decisions it had waived the prohibition to "permit evaluation of evidence or authority that could not have been submitted earlier and for other compelling reasons." Id. Under the circumstances, however, the Board denied CSXT's request: "CSXT has not submitted compelling reasons for a waiver. CSXT's pleading tenders no additional statutory authority or case law, but simply argues that we should reject the reasoning submitted in Pepco's reply. CSXT's reply to Pepco's reply is merely an attempt to have the last word in argument, which contravenes the intent of our prohibition of replies to replies." Id.

Under the compelling reason standard in Pepco, Morris prevails where CSXT failed. Morris's tendered reply responds to both new arguments and new information that C&G raised for the first time in its reply. Morris could not have anticipated C&G's arguments because they go well beyond the merits of its purportedly exempt line acquisition and operation to the merits of the City's underlying construction project under 49 U.S.C. § 10502(a), making a case for retroactive authorization that the City should make in a separate proceeding. Because C&G's

argument is supported with documents most of which were previously unavailable to Morris, Morris's tendered reply is anything but an attempt to have "the last word in argument." Rather, it is an effort to ensure a full and fair discussion of new argument and material. Application of 49 C.F.R. § 1104.13(c) would prevent such a full and fair discussion. See STB Finance Docket No. 34041, Arizona Electric Power Coop. v. BNSF, 2001 STB Lexis 986 (Served December 26, 2001), (Accepting a reply to a reply "[i]n the interest of a complete record); See STB Finance Docket Nos. 33995 and 33996, SF&L, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Ry. Corp., between La Harpe and Peoria, Ill.; Kern W. Schumacher and Morris H. Kulmer—Continuance in Control Exemption—SF&L Ry., Inc., 2002 STB Lexis 87, *3 (Served February 1, 2002) (Allowing a reply to a reply where parties' supplemental petition raised new arguments).

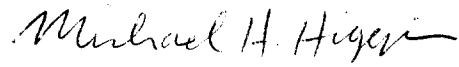
The Board has also permitted a reply to a reply where the filing will not prejudice the other party. STB Finance Docket No. 33522, Chicago Southshore & South Bend Railroad—Petition for Declaratory Order—Status of Track at Hammond, IN, (served Dec. 17, 1998). Here, Morris will suffer prejudice unless the Board permits its reply in order to correct the record. As such, the tendered reply is proper.

III. CONCLUSION

Because Morris has demonstrated good cause and compelling reasons for submitting its Reply to Reply of Columbus and Greenville Railway Company to Emergency Petition to Stay and Petition to Revoke Exemption—Morris Recycling Inc., the Board should waive application of 49 C.F.R. § 1104.13.

WHEREFORE, for all the foregoing reasons, Morris Recycling Inc. respectfully petitions the Board for an order granting it leave to file a reply to a reply.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael H. Higgins". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

*Attorneys for
Morris Recycling, Inc.*

April 14, 2005

CERTIFICATE OF SERVICE

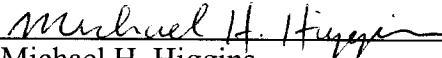
I hereby certify that I have this day served copies of this "Petition for Leave to File a Reply to a Reply" upon all parties of record in this proceeding, as indicated below:

Facsimile and Overnight Mail

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

Regular Mail

Billy B. Bowman
Brewer, Deaton & Bowman
P.O. Drawer B
Greenwood, Mississippi 38935-0706



Michael H. Higgins

April 14, 2005

EXHIBIT A

April 1, 2005

Via Express Mail

H. Lynn Gibson
Columbus and Greenville Railroad Company
Executive Vice President/CFO
201 19th Street North
Columbus, Mississippi 39703

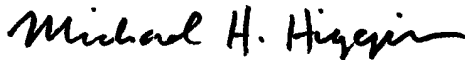
RE: Finance Docket No. 34666, *Columbus and Greenville Railway Co. – Verified Notice of Exemption – Acquisition and Operation of 2.99 Miles of Newly Constructed Track in Greenwood, Leflore County, MS*

Dear Mr. Gibson:

Enclosed please find Morris Recycling, Inc.'s First Set of Discovery Requests, including Interrogatories and Requests for the Production of Documents.

If you have any questions regarding the foregoing, then please do not hesitate to contact me.

Sincerely,



Jeffrey O. Moreno
Michael H. Higgins
Counsel for Morris Recycling, Inc.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34666

COLUMBUS AND GREENVILLE RAILWAY CO.
—VERIFIED NOTICE OF EXEMPTION—
ACQUISITION AND OPERATION OF 2.99 MILES OF NEWLY
CONSTRUCTED TRACK IN GREENWOOD, LEFLORE COUNTY, MS

**MORRIS RECYCLING INC.'S
FIRST SET OF DISCOVERY REQUESTS**

Pursuant to the regulations of the Surface Transportation Board governing Notice of Exemption proceedings and Exemption Revocation proceedings, codified at 49 C.F.R. § 1121 et seq., and the regulations governing Discovery, codified at 49 C.F.R. §§ 1114.21 to 1114.31, Morris Recycling, Inc. ("Morris"), hereby serves its First Discovery Requests on the Columbus and Greenville Railway Co. ("C&G"), consisting of Interrogatories and Document Requests. Responses to the foregoing Discovery Requests should be served on counsel for Morris within fifteen (15) days of April 1, 2005, at the following address: Jeffrey O. Moreno, Esq., Thompson Hine LLP, 1920 N Street N.W., Suite 800, Washington, D.C. 20036. If you have any questions pertaining to these Discovery Requests, then please contact the undersigned.

These Discovery Requests are subject to the following Definitions and Instructions.

DEFINITIONS

1. "bypass track" means the track identified and described in the Notice at ¶¶(d), (e), and (f). ("Notice" is defined below at ¶11.)

2. "C&G" means Columbus & Greenville Railway Co.
3. "the City" means the City of Greenwood, County of Leflore, MS, and/or its city government, as the case may be.
4. "communication" means the transmittal or exchange of information of any kind in oral, written, or electronic form, including e-mail.
5. "describe" when used in relation to a communication means to identify the participants, the date or time period when the communication took place, the location of the participants at the time of the communication, and a detailed summary of the content of the communication.
6. "Document" means all writings or other compilations of information, whether generated by hand, mechanical, or electronic means, including, without limitation, photographs, lists, memoranda, reports, studies, notes, letters, e-mails, phone logs, contracts, workpapers, maps, tape recordings, computer tapes, computer programs, computer printouts, computer models, statistical or financial statements, graphs, charts, sketches, note charts, plans, drawings, minutes or records of meetings, expressions or statements or policy, brochures, pamphlets, advertisements, tables, circulars, press releases, drafts, revisions of drafts, invoices, receipts, telecopies, telegrams, newsletters, notations, books, affidavits, statements, speeches, summaries, opinions, analyses, projections, evaluations, statistical records, proposals, outlines, any electronic or mechanical records or representations (including physical things such as, but not limited to, computer disks), and all other materials of any tangible medium or expression, in C&G's current or prior possession, custody or control. Further, the term "document" includes:
 - (a) Both basic records and summaries of such records (including computer runs);
 - (b) Both original versions and copies that differ in any respect from original versions; and
 - (c) Both documents in the possession of C&G and documents in the possession of consultants, counsel, or any other person that has assisted C&G.

7. "Identify,"

(a) when referring to a person, means to give, to the extent known, the person's full name, present or last known business address, employment position, job description, phone number, and the present or last known place of employment;

(b) when referring to a corporation, partnership, company or other business entity, means to state the name of the entity and the address and telephone number of its principal place of business;

(c) when referring to a document, means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; (iv) author(s), addressee(s) or recipient(s); and (v) its present location and custodian.

8. "Including" means including without limitation.

9. "main line railroad" means the track through the City of Greenwood, which may be subject to abandonment, in whole or in part, as referred to in ¶(e) of the Notice.

10. "Morris" means Morris Recycling, Inc.

11. "Notice" means the Verified Notice of Exemption filed with the Surface Transportation Board in this docket on or about March 23, 2005.

12. "Person" means natural persons, corporations, institutions, partnerships, firms, joint ventures, associations, political subdivisions or other legal entities, as the case may be.

13. "personnel" includes without limitation officers, directors, employees, agents, staff, consultants, counsel, contractors, representatives, workers, and any other persons either directly or indirectly employed.

14. "Possession, custody, or control" refers to and includes documents actually within the possession, custody or control of C&G, and refers to and includes documents prepared by, obtained, or placed in the possession, custody, or control of any person within the scope of his or her duties or relationship to C&G; and further refers to and includes documents having been

placed in the temporary possession, custody, or control of any third party by C&G. Documents are deemed to be in the possession, custody, or control of C&G if C&G has the right to secure the document, or a copy thereof from another person or entity, whether public or private, having such actual physical possession, custody, or control thereof.

15. "Provide" (except where the word is used with respect to providing service or equipment) means to supply a complete narrative response.

16. "Produce" means to make available to the undersigned for copying and viewing.

17. "Refers to" or "referring to" mean making a statement about, discussing, describing, reflecting, dealing with, consisting of, constituting, comprising, or in any way concerning, in whole or in part, the subject.

18. "Related", "related to", or "relating to" mean making a statement about, discussing, describing, reflecting, dealing with, consisting of, constituting, comprising, or in any way concerning, in whole or in part, the subject.

INSTRUCTIONS

1. Each paragraph below shall operate and be construed independently. Unless otherwise indicated, no paragraph limits the scope of any other paragraph.

2. Each Interrogatory should be responded to separately and fully in writing, unless it is objected to, in which event the reasons for objection should be stated.

3. Unless otherwise specified, all uses of the conjunctive include the disjunctive and vice versa, and words in the singular include the plural and vice versa.

4. Unless otherwise specified, these requests cover calendar years 2001 to the date of response.

5. If any information or document is withheld on the ground that it is privileged or otherwise not discoverable:

- (a) Identify the nature of the information or document;
- (b) Identify the subject matter of the information or document, i.e., briefly describe the contents of the document;
- (c) Identify the author and all addressees or recipients of the document and indicate whether any of those individuals are attorneys;
- (d) Identify the date of the document; and
- (e) State the nature of the claim that the information or document is privileged.

6. If the production of any requested document is withheld for claimed grounds other than privilege or attorney work product, state with specificity the basis for such withholding.

7. If any document called for by any Request for the Production is not available or accessible, C&G should provide sufficient explanation of the reasons, as well as an identification of the unavailable or inaccessible document(s).

8. If any document or information called for by these Requests is available in computerized format, produce the document or information in that format, along with a description of the software utilized, instruction books, and all other material necessary to translate the documents or information from computerized to hard copy format.

9. If C&G knows or later learns that its response to any request is incorrect, it should correct that response.

10. Subject to Instruction 12, all documents should be produced or made available for inspection in the form in which they are retained by C&G in its usual course of business, unless otherwise agreed by Morris.

11. These Requests are continuing in nature, and C&G should supplement its responses if it becomes aware of additional responsive information or documents subsequent to its initial response to these requests.

12. The produced documents should be organized or numbered in such a manner that C&G may readily determine which documents are being produced in response to each specific request. If no document is produced in response to any specific request, please so indicate in the response.

13. The Document Requests contained herein apply to all documents within the possession, custody, or control of C&G.

INTERROGATORIES

1. Identify all C&G personnel with knowledge of the statements or representations contained in the Notice.

2. Identify the date on which physical construction of the bypass track began.

3. Identify the date on which physical construction of the bypass track was completed.

4. Identify all C&G personnel involved in the development, planning, or construction of the bypass track.

5. Describe the involvement of the personnel identified in response to Interrogatory No. 4.

6. Identify and fully describe any financial contribution made by, or on behalf of C&G to the construction of the bypass track.

7. Identify and fully describe any contribution made by, or on behalf of C&G to the construction of the bypass track, other than a financial contribution, including any contribution of materials, supplies, equipment, labor, machinery, manpower, or know-how.

8. Identify the total cost of construction for the bypass track.

9. Describe the funding for construction of the bypass track, including any financial contributions or grants from any federal, state, or local governmental entity.

10. Identify any resolutions, motions, initiatives, referendums, votes or legislative measures taken or approved, as the case may be, by any governmental entity relating to construction of the bypass track and/or the "like kind exchange of properties," referred to in ¶(c) of the Notice.

DOCUMENT REQUESTS

1. Produce all documents relating to the "like kind exchange of properties" referred to in ¶(c) of the Notice.

2. Produce all agreements, contracts, or memoranda of understanding between C&G and the City relating to the bypass track.

3. Produce all documents relating to C&G's planned operation and control of the bypass track, as referred to in ¶(d) of the Notice.

4. Produce all permits, licenses, authorities, or approvals, issued by any governmental entity, related to construction of the bypass track.

5. Produce all agreements, contracts, or memoranda of understanding between the City and C&G relating to the main line railroad.

6. Produce all presentations, reports, analyses, proposals, evaluations, findings, or memoranda relating to moving rail operations out of the City's central commercial area.
7. Produce all communications to, or from, the City relating to the bypass track.
8. Produce all communications to, or from, the City relating to the main line railroad.
9. Produce all communications to, or from, any C&G rail customer relating to the bypass track.
10. Produce all communications to, or from, any C&G rail customer relating to cessation of C&G's operations over the main line railroad.
11. Produce all documents related to the Interrogatories contained herein.

Respectfully submitted,



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*Attorneys for
Morris Recycling, Inc.*

Dated: April 1, 2005