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February 11, 2019

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VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
February 11, 2019
Part of
Public Record

Re: Central Of Georgia Railroad Company – Abandonment Exemption – In Montgomery County, Alabama, AB-290 (Sub-No. 278X); and CSX Transportation, Inc. – Discontinuance Of Service Exemption – In Montgomery County, Alabama, AB-55 (Sub-No. 728X)

Dear Ms. Brown:

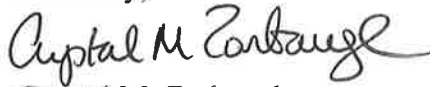
On July 15, 2014, Central of Georgia Railroad Company (“CGA”), a wholly owned subsidiary of Norfolk Southern Railway Company, and CSX Transportation, Inc. (“CSXT”) jointly filed a verified notice of exemption pursuant to 49 C.F.R. part 1152, subpart F -Exempt Abandonments and Discontinuances of Service and Trackage Rights, for (1) CGA to abandon a total of 2.12 miles of CGA railroad line (the “Line”) extending between Milepost H 411.50 and Milepost H 413.62, all located in the City of Montgomery, Montgomery County, Alabama; and (2) CSXT to discontinue operations and terminate its common carrier obligation over a 0.55 mile portion of the Line between Milepost H 413.07 and Milepost H 413.62, over which CSXT held operating rights. Notice of the exemption was served and published in the Federal Register on August 4, 2014 (79 Fed. Reg. 45,232). The exemptions were scheduled to become effective on September 3, 2014. However, on August 14, 2014, pursuant to 49 C.F.R. § 1152.29, the City of Montgomery, Alabama (the “City”) filed a request for the issuance of a notice of interim trail use (“NITU”) to negotiate with CGA for acquisition of the Line for use as a trail under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). The City also requested imposition of a public use condition under 49 U.S.C. § 10905 for the right-of-way.¹

¹ In a late decision served September 2, 2014, the Board implemented interim trail use/rail banking to permit the City to negotiate a trail agreement with CGA for a period of 180 days until March 1, 2015. The Board also imposed a 180-day public use condition, which expired on March 2, 2015.

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Over the past three years, CGA and the City have been granted numerous extensions to negotiate a NITU for the Line.² Despite the ongoing negotiations, the parties have been unable to come to terms on a NITU agreement. After determining that a NITU is unlikely, CGA has decided it is no longer willing to continue negotiations and intends to let the current period expire without another extension.³ Although CGA no longer desires to negotiate trail use, CGA has determined that it desires to preserve the Line for future rail service. To accomplish this objective, CGA has decided it will exercise discontinuance authority for the Line, rather than abandonment authority. CGA desires to make its decision effective on February 9, 2019.⁴ CGA fully understands that if it later decides to abandon the Line it will have to refile for abandonment authority. Should you have any questions concerning this notice of consummation, please contact the undersigned counsel for CGA.

Sincerely,



Crystal M. Zorbaugh
An Attorney for Norfolk Southern Railway Company

cc: All parties of record
Greg Summy
Laura Hoag
Scott Plum
Alabama Public Service Commission
Alabama Department of Transportation

² Per a stamped decision by the Board on August 14, 2018, the current NITU negotiation period expired on February 8, 2019.

³ Under the Board's rules at 49 C.F.R. § 1152.29(e)(2) and per the Consummation Decision, CGA has 60 days (until April 9, 2018) from the termination of the NITU negotiation period to consummate the abandonment. See Consummation of Rail Line Abandonments that are Subject to Historic Preservation and Other Environmental Conditions, EP 678 (STB served April 23, 2008) ("Consummation Decision").

⁴ The Board has held that if a railroad wishes to discontinue service over a portion of a rail line that has been authorized for abandonment but before it has consummated the abandonment, it may do so and exercise the lesser included authorization of discontinuance authority rather than abandonment authority. See T&P Ry.--Aban.--Shawnee, Jefferson, & Atchison Count., KS, 2 S.T.B. 36, 40 (1997). See also The Alabama Great Southern Railroad Company – Discontinuance Exemption – In Saint Bernard Parish, LA, AB-290 (Sub-No. 323X) (STB served December 17, 2013) (explaining that carriers which seek abandonment authority can choose instead to exercise the lesser included discontinuance authority). See also Almono LP–Abandonment Exemption–In Allegheny County, PA, AB-842X (STB served Jan. 28, 2004) (explaining that when a carrier is authorized to abandon a line, that authority is permissive, not mandatory. The carrier can choose to exercise that authority or not).