

LAW OFFICES OF
LOUIS E. GITOMER, LLC

LOUIS E. GITOMER
Lou@lgraillaw.com

MELANIE B. YASBIN
Melanie@lgraillaw.com
410-296-2205

600 BALTIMORE AVENUE, SUITE 301
TOWSON, MARYLAND 21204-4022
(410) 296-2250 • (202) 466-6532
FAX (410) 332-0885

243963

July 18, 2017

Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
July 18, 2017
Part of
Public Record

Re: **Docket No. AB-55 (Sub-No. 773X), CSX Transportation, Inc.—
Abandonment—in Harlan County, KY**

Dear Ms. Brown,

Enclosed are the original and 10 copies of a Petition for Exemption for CSX Transportation, Inc. ("CSXT") to abandon an approximately 1.6-mile rail line on its Northern Region, Huntington Division, CV Subdivision, Engineering Appalachian Division, also known as the Merna Spur between milepost 0MV 250.1, at the end of the line, and milepost 0MV 248.5 at the wye connecting to the CSXT Glidden Siding in Harlan County, KY. Also enclosed are a check for the filing fee of \$6,900 and a CD containing the Notice in WORD and pdf format.

Please time and date stamp the additional copy of this letter and return it in the self-addressed prepaid envelope.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



Melanie B. Yasbin
Attorney for CSX Transportation, Inc.

Enclosure

FILED
July 18, 2017
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
July 18, 2017
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 773X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN HARLAN COUNTY,
KY

PETITION FOR EXEMPTION

Steven Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer, Esq.
Melanie B. Yasbin
Law Offices of Louis E. Gitomer
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgrailaw.com

Attorneys for: CSX TRANSPORTATION, INC.

Dated: July 18, 2017

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 773X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—IN HARLAN COUNTY,
KY

PETITION FOR EXEMPTION

CSX Transportation, Inc. (“CSXT”) petitions the Surface Transportation Board (the “Board”) to exempt from 49 U.S.C. §10903 under 49 U.S.C. §10502, CSXT’s abandonment of an approximately 1.6-mile rail line on its Northern Region,¹ Huntington Division, CV Subdivision, Engineering Appalachian Division, also known as the Merna Spur between milepost 0MV 250.1, at the end of the line, and milepost 0MV 248.5 at the wye connecting to the CSXT Glidden Siding in Harlan County, KY (the “Line”), from the prior approval requirements of 49 U.S.C. §10903.²

¹ This Line was previously part of the Southern Region but through reorganization is now in the Northern Region.

² Common carrier service over the Line was discontinued on March 22, 2016, pursuant to *CSX Transportation, Inc.—Discontinuance of Service Exemption—in Harlan County, Ky.*, Docket No. AB-55 (Sub-No. 753X) (served February 18, 2016).

In June 2017, CSXT began serving JRL Coal, Inc. (“JRL”). JRL has reopened a coal mine at the end of the Line and started shipping coal. JRL is the only shipper on the Line. CSXT is seeking to abandon the Line, reclassify the Line as spur track, and lease the spur track to JRL. JRL has entered a Track Lease Agreement with CSXT that will take effect once the abandonment has been consummated and the track has been reclassified. JRL plans to redevelop the site and used the reclassified spur track to reach its facility. CSXT will continue to serve JRL.

PROPOSED TRANSACTION

CSXT proposes to abandon an approximately 1.6- mile rail line between milepost 0MV 250.1, at the end of the line, and milepost 0MV 248.5 at the wye connecting to CSXT’s Glidden Siding in Harlan County, KY. The Line includes the station at Creech (FSAC 43739/OPSL 20395) at milepost 0MV 250. A map of the Line is attached as Exhibit A (a colored version is in Exhibit G). Exhibit B consists of the Environmental Report and Exhibit C consists of the Historic Report. The draft Federal Register Notice is in Exhibit D, and copies of the newspaper publication and the required certification are in Exhibit E. The certificate of service is in Exhibit F. A letter from JRL in Exhibit G states that JRL does not oppose the abandonment.

The Line traverses United States Postal Service Zip Code 40818. Based on information in the possession of CSXT the Line does not contain federally granted right-of-way. Any documentation in the possession of CSXT concerning title will be made available to those requesting it.

BACKGROUND

The approximately 1.6 mile line is located in Harlan County, KY. CSXT is seeking to abandon the Line, reclassify it as spur track and lease it to JRL. The Line ends at JRL's facility. JRL does not oppose CSXT's abandonment of the Line. Under the lease agreement, JRL will become responsible for maintenance of the Line and will upgrade the track and materials, while CSXT will continue to provide service.

JRL has reopened a coal mine at the end of the Line and started shipping coal. JRL has entered a Track Lease Agreement with CSXT that will take effect once abandonment has been consummated and the track reclassified. JRL's use of the Line will be limited to: (1) movement of railcars between JRL's various plant facilities; (2) storage, loading, and unloading operations; and (3) receipt and delivery of railcars to CSXT. No other industry will be served from the Line.

ARGUMENT SUPPORTING THE ABANDONMENT AND DISCONTINUANCE OF SERVICE

CSXT seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. §10903 in order to abandon the Line.

Under 49 U.S.C. §10502, the Board must exempt a transaction from regulation when it finds that:

(1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and

(2) either:

(a) the transaction is of limited scope, or

(b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress encouraged the Board's predecessor agency to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep No. 1430, 96 the Cong. 2d Sess. 105 (1980). See also *Exemption From Regulation--Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), vacated and remanded on other grounds, *Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provision as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application of 49 U.S.C. §10903 Is Not Necessary to Carry Out the Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expense associated with the preparation and filing of a formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit. 49 U.S.C. §10101 (2, 7, and 15). Since CSXT will continue to serve the customer on the Line there will be no loss of rail service.

Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected since the JRL, the only shipper using the Line will not be deprived of any needed rail services.

B. This Transaction Is Of Limited Scope

The proposed transaction is of limited scope. CSXT seeks to abandon a 1.6-mile railroad line in Harlan County, KY.

C. This Transaction Will Not Result In An Abuse Of Market Power.

CSXT will abandon the Line and reclassify it as spur track but continue to serve the shipper located on the Line. The shipper has entered an agreement with CSXT to lease the Line as excepted track. The shipper will use the track to facilitate its mining operation and CSXT will access the track to pick-up loaded trains and drop off empty cars, pursuant to an agreement with JRL

ENVIRONMENTAL REPORT

An Environmental Report was electronically filed with the Board's Office of Environmental Affairs ("OEA").

HISTORIC REPORT

A Historic Report was electronically filed with OEA.

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached hereto as Exhibit D.

LABOR PROTECTION

The interests of railroad employees of CSXT who may be adversely affected by the proposed abandonment will be adequately protected by the labor protective conditions in *Oregon Short Line R. Co.--Abandonment--Goshen*, 360 I.C.C. 91 (1979).

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. §10903 to the abandonment of the Line proposed by CSXT is not required to carry out the rail transportation policy set forth in 49 U.S.C. §10101, as previously shown. Nor is Board regulation required to protect shippers from the abuse of market power. Moreover, this abandonment is of limited scope.

Accordingly, CSXT respectfully requests the Board grant an exemption for the proposed abandonment of the Line.

Respectfully Submitted,



Steven Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-1229

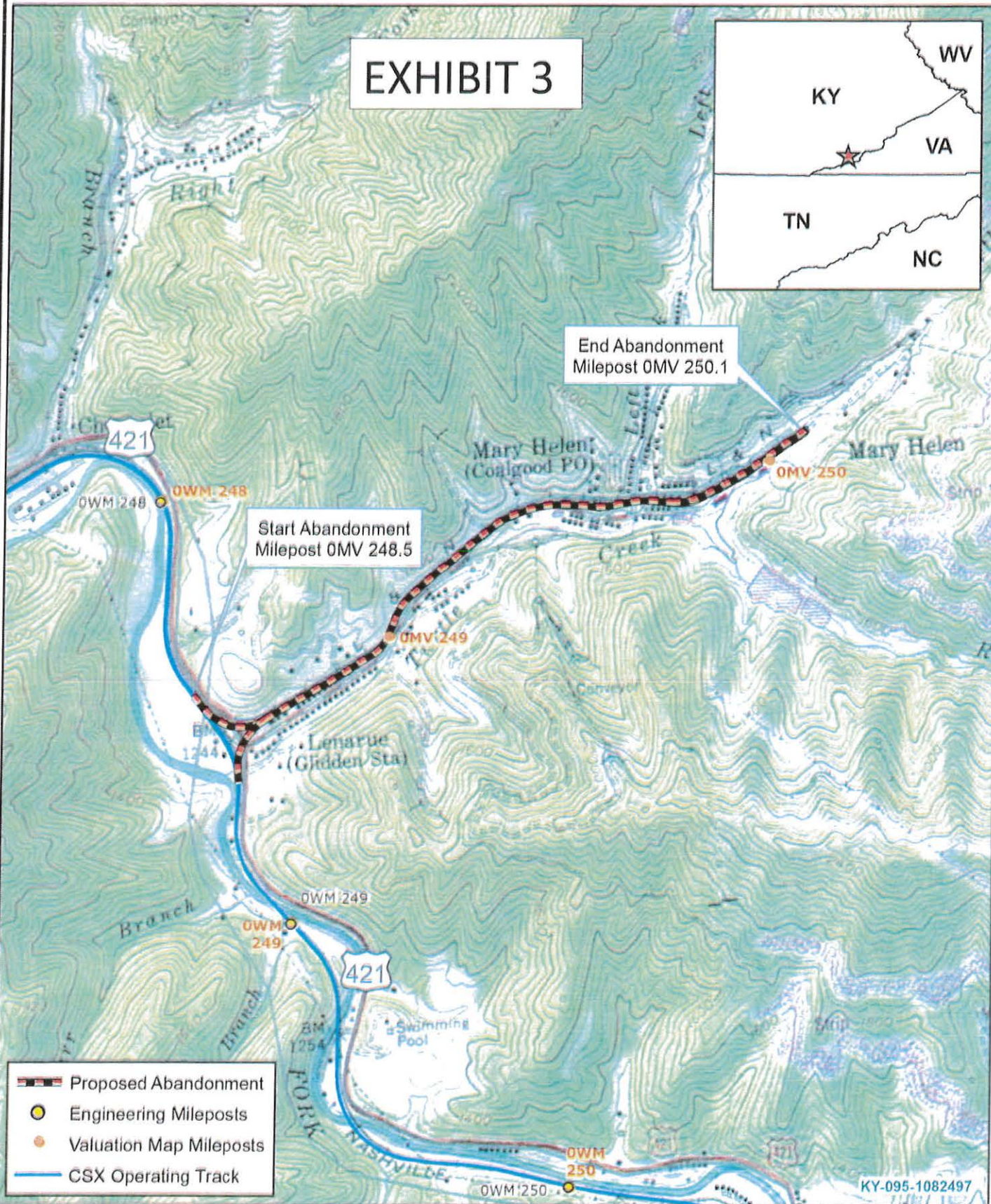
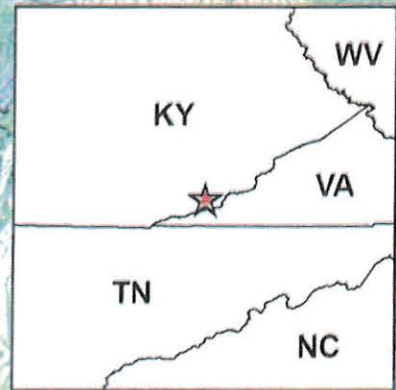
Louis E. Gitomer, Esq.
Melanie B. Yasbin, Esq.
Law Offices of Louis E. Gitomer
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

Attorneys for: CSX TRANSPORTATION, INC.

Dated: July 18, 2017

EXHIBIT A-MAP

EXHIBIT 3



CSX Transportation, Inc.
Proposed Abandonment - Topo Map
Harlan County, KY
Merna Spur

Milepost OMV 248.5 to OMV 250.1
 Total Distance of approx. 1.6 Miles
 Louisville Division - CV Subdivision
 STB Docket No. AB 55 (Sub-No. 773X)



CSX Real Property, Inc.

EXHIBIT B-ENVIRONMENTAL REPORT

CERTIFICATE OF SERVICE OF ENVIRONMENTAL REPORT

Pursuant to the requirements of 49 C.F.R. §1105.7(c) and .11, the undersigned hereby certifies that a copy of the Environmental Report in Docket No. AB-55 (Sub-No. 773X) was mailed via first class mail on June 22, 2017 to the following parties:

Mr. Timothy Sturgill
Railtrail Development Office
Department of Local Government
1024 Capital Center Drive, Suite 340
Frankfort, KY 40601-8204

Kentucky Department for Environmental
Protection
300 Sower Blvd, 2nd Floor
Frankfort, KY 40601

U.S. Fish & Wildlife Service
J C Watts Federal Building, Room 265
330 West Broadway
Frankfort, KY 40601-8670

U.S. EPA-Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

U.S. Army Corps of Engineers
Louisville District
P.O. Box 59
Louisville, KY 40201-0059

U.S. Department of Agriculture
Natural Resources Conservation Service
London Service Center
100 Fortress Properties STE 1
London, KY 40741

National Geodetic Service (NOAA)
NGS.InfoCenter@noaa.gov (via email)

National Park Service
Southeast Regional Office
Mr. Stan Austin
100 Alabama Street, SW, 1924 Building
Atlanta, GA 30303

Mr. Dan Mosley
Harlan County Judge Executive
P.O. Box 956
Harlan, KY 40831

Office of the Governor
The Honorable Matt Bevin
700 Capital Avenue, Suite 100
Frankfort, KY 40601

Kentucky Office of Intermodal Programs
125 Holmes Street-3rd Floor
Frankfort, KY 40601


Melanie Yasbin
July 18, 2017

EXHIBIT C-HISTORIC REPORT

CERTIFICATE OF SERVICE OF HISTORIC REPORT

Pursuant to the requirements of 49 C.F.R. §1105.8(c) and .11, the undersigned hereby certifies that a copy of the Combined Environmental and Historic Report in Docket No. AB-55 (Sub-No. 773X) was mailed via first class mail on June 22, 2017 to the following party:

Kentucky Heritage Council
300 Washington Street
Frankfort, KY 40601



Melanie Yasbin

July 18, 2017

EXHIBIT D—FEDERAL REGISTER NOTICE

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 773X)

CSX TRANSPORTATION, INC.—ABANDONMENT—HARLAN COUNTY, KY

Notice of Petition for Abandonment Exemption

On July 18, 2017, CSX Transportation, Inc. (“CSXT”) filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption to abandon an approximately 1.6 miles of railroad line on Northern Region, Huntington Division, CV Subdivision, Engineering Appalachian Division, also known as the Merna Spur from milepost 0MV 248.5 to milepost 0MV 250.1, which traverses United States Postal Service ZIP Code 40818 in Harlan County, KY (the “Line”). The Line includes the station of Creech (FSAC 43739/OPSL 20395) at milepost 0MV 250.

The Line does not contain federally granted rights-of-way. Any documentation in the railroad’s possession will be made available promptly to those requesting it.

The interest of railroad employees of CSXT will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board’s Office of

Environmental Analysis (“OEA”). An environmental assessment (“EA”) (or environmental impact statement (“EIS”), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact OEA. EAs in this proceeding normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

EXHIBIT E-NEWSPAPER CERTIFICATION

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-55 (Sub-No. 773X), as required by 49 C.F.R. § 1105.7(c) and .12, was advertised on July 6 and 18, 2017 in The Harlan Daily Enterprise, a newspaper of general circulation in Harlan County, KY.



Melanie Yasbin

July 18, 2017

CSX Transportation, Inc. (“CSXT”) gives notice that on or about July 18, 2017, it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, et seq., permitting CSXT to abandon approximately 1.6 miles of railroad line on Northern Region, Huntington Division, CV Subdivision, Engineering Appalachian Division, also known as the Merna Spur from milepost 0MV 248.5 to milepost 0MV 250.1, which traverses United States Postal Service ZIP Code 40818 in Harlan County, KY (the “Line”). The proceeding has been docketed as No. AB-55 (Sub-No. 773X).

The Board’s Office of Environmental Analysis (“OEA”) will generally prepare an Environmental Assessment (“EA”), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to OEA, Surface Transportation Board, Washington, DC 20423 or by calling OEA at 202-245-0295.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board’s Section of Administration, Office of Proceedings, 395 E Street, SW, Washington, DC 20423 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant’s representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance may be directed to the Board’s Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0233. Copies of any comments or requests for conditions should be served on the applicant’s representative: Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, 410-296-2250, email at Lou@lgraillaw.com.

EXHIBIT F—CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. §1152.60(d), the undersigned hereby certifies that the Petition for Exemption in Docket No. AB-55 (Sub-No. 773X), *CSX Transportation, Inc.—Abandonment Exemption—in Harlan County, KY* was mailed via first class mail, postage prepaid, on July 18, 2017, to the following parties:

State Public Service Commission

Kentucky Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, KY 40602-0615

Military Surface Deployment and Distribution Command Transportation Engineering Agency

Headquarters
Military Surface Deployment and Dist Cmd
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
709 Ward Drive, Building 1990
Scott AFB, IL 62225-5357

National Park Service

Mr. Rick Potts
Chief, Conservation and Outdoor Recreation Division
Rivers, Trails and Conservation Assistance Program National Park Service
1849 C Street, N.W. (Org Code 2220)
Washington, DC 20240

National Park Service

U.S. Department of Interior
National Park Service
Land Resources Division
1849 C St., NW
Washington, DC 20240

U.S. Department of Agriculture

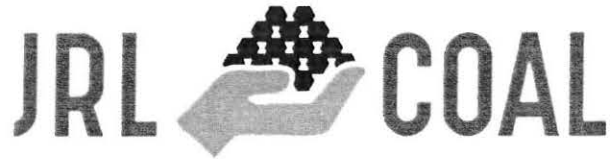
U.S. Department of Agriculture
Chief of the Forest Service
4th Floor N.W., Auditors' Building
14th Street and Independence Avenue, S.W.
Washington, DC 20250

JRL Coal
PO Box 3403
London, KY 40743



Melanie Yasbin
July 18, 2017

EXHIBIT G—Shipper Letter



PO Box 3403
London, KY 40743
(606) 224-6774

April 17, 2017

Manager-Network Services
CSX Transportation, Inc.
500 Water Street, J315
Jacksonville, FL 32202

To Whom It May Concern:

JRL Coal Company has been advised that CSX Transportation intends to seek approval from the Surface Transportation Board to abandon a portion of the railroad's operation in Coalgood, Harlan County, Kentucky. Since the proposed abandonment will not have an adverse impact on our rail service, we do not oppose the proposed abandonment. We understand that you may submit this letter to the Surface Transportation Board as part of the proceedings on the proposed abandonment.

Sincerely,

Cecil Lewis

Cecil Lewis
cecil.lewis@jrlcoal.com