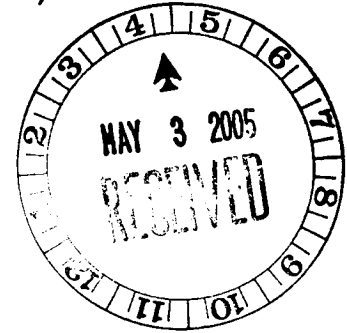


213915

May 3, 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:

Enclosed please find the original and ten (10) copies of Morris Recycling, Inc.'s Motion to Compel for filing in the above-referenced proceeding. Also enclosed is one diskette with a copy of the Motion in PDF format.

An extra copy of this Motion is enclosed for time and date stamping and return to our offices.

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

Sincerely,

Michael H. Higgins

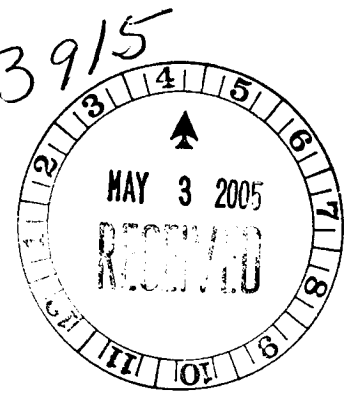
Jeffrey O. Moreno
Michael H. Higgins
Counsel for Complainant

**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
MOTION TO COMPEL**



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Dept of
Public Record

Morris Recycling, Inc. ("Morris"), by and through its undersigned counsel, hereby submits this Motion to Compel, seeking an order from the Board requiring the Columbus and Greenville Railway Company ("C&G") to respond to Morris's First Set of Discovery Requests (attached hereto at Tab 1). As explained herein, Morris's requests, consisting of ten interrogatories and eleven document requests, are directly relevant to the central issues of this proceeding. In particular, Morris's discovery seeks to elicit information about C&G's new rail customers in the Greenwood-Leflore Industrial Park and the loss of service for rail customers on C&G's main line (in addition to Morris), for purposes of testing C&G's assertions both that its purported relocation should be exempt from STB scrutiny and that construction of the by-pass track was otherwise exempt from the prior approval requirements of 49 U.S.C. § 10901. Additionally, Morris asks for an extension of the 45 day period set forth at 49 C.F.R. § 1121.2, so that it can use information produced in discovery to supplement its Petition to Revoke. Morris's discovery is proper and an order requiring C&G to respond should be issued promptly, pursuant to 49 C.F.R. § 1114.21 *et seq.*

I. MORRIS’S FIRST DISCOVERY SATISFIES THE STANDARD THAT THE BOARD HAS APPLIED REGARDING PROPER DISCOVERY IN REVOCATION PROCEEDINGS ARISING OUT OF ACQUISITION AND OPERATION EXEMPTIONS.

Morris’s first discovery is limited in scope, relevant to the issues raised in this case, and readily available from C&G. Accordingly, it satisfies the standard that the Board has applied in recent revocation proceedings arising from acquisition and operation exemptions. *See* STB Finance Docket No. 34540, *The Columbus & Ohio Rail Road Company—Acquisition and Operation Exemption—Rail Lines of CSX Transportation, Inc.*, 2005 STB Lexis 111, *6 (Served Feb. 22, 2005); STB Finance Docket No. 34536, *Indiana & Ohio Railroad, Inc.—Acquisition and Operation Exemption—CSX Transportation, Inc.*, 2004 STB Lexis 761, *3 (Served Nov. 23, 2004).

Several of Morris’s discovery requests pertain directly to its contention that the City of Greenwood (the “City”) built the by-pass track as a common carrier line for operation by C&G and failed to obtain necessary STB approval before doing so. Interrogatories nos. 4 – 7 and document request nos. 2, 3, 6, 7, and 9 all elicit information relevant to this issue. For example, interrogatory nos. 5 and 6 seek to ascertain C&G’s involvement, financial or otherwise, in the City’s construction of the by-pass track:

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.

Similarly, Morris’s document requests seek information confirming that the City built the track as a common carrier line for operation by C&G:

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.
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.
9. Produce all communications to, or from, any C&G rail customer relating to the bypass track.

Plainly, the foregoing requests directly relate to a key issue in this case and, therefore, are proper under recent STB precedent.

Morris's first discovery is also relevant to its contention that the "like-kind-exchange" contemplated by C&G and the City requires detailed scrutiny because it is not limited in scope and will deprive at least one shipper, Morris, of rail service. For example, document request nos. 3, 6, 9, and 10 relate to this issue, seeking information about C&G's planned operation of the bypass track and C&G's communications with customers about cessation of operations on its main line and service via the by-pass track. This information will give Morris a complete picture of the "like-kind-exchange" and its consequences, so that Morris may further substantiate that revocation of C&G's exemption is warranted under 49 U.S.C. § 10502(d). Because the information sought by Morris is plainly "relevant to matters in dispute in this proceeding" C&G should be compelled to respond. *See* STB Finance Docket No. 34549, *Illinois Railnet, Inc.—Acquisition and Operation Exemption—BNSF Railway Co.*, 2005 STB Lexis 171, *3-4 (Served April 14, 2005).

Additionally, a number of Morris's discovery requests are directly relevant to C&G's erroneous assertion that the "like-kind-exchange" qualifies as an exempt track relocation. This issue, in particular, justifies several of Morris's discovery requests, which will uncover factual information allowing Morris to address the standards set forth in STB Finance Docket No. 33796, *Sacramento Transit District—Petition for Declaratory Order Regarding Carrier Status*, 2000 STB Lexis 369, *4 (Served June 29, 2000). Document request nos. 2, 3, and 5 – 10 will yield information about the effect of the planned exchange on "service to shippers" and C&G's "territory and traffic," in particular its new rail service to the Greenwood-Leflore Industrial Park, located adjacent to a portion of the by-pass track. Request nos. 3, 6, and 9 would specifically encompass information in C&G's possession about service to rail shippers in the industrial park and the extent of the rail traffic moving in and out of the industrial park.

Morris's other discovery requests seek to ascertain the identities of C&G personnel having knowledge of the City's construction and C&G's planned operations, for purposes of taking depositions (interrogatory nos. 1, 4, and 5), and to confirm that prior STB approval for construction of the by-pass track was not obtained (interrogatory no. 10; document request no. 4). Accordingly, these requests are also proper.

II. MORRIS REQUESTS AN EXTENSION OF THE 45 DAY PERIOD SET FORTH IN THE BOARD'S RULES AT 49 C.F.R. § 1121.2 TO SUPPLEMENT ITS PETITION TO REVOKE.

Pursuant to 49 C.F.R. § 1121.2, Morris has the right to supplement its petition to revoke within 45 days of its filing date, based on information obtained through discovery. In this proceeding, Morris filed its petition to revoke on March 30, 2005, and promptly served its First Set of Discovery Requests on April 1, 2005. (Pursuant to a request from C&G, Morris extended C&G's response date from April 15 to May 2.) Given the March 30th filing date, Morris has

until May 16th to submit supplemental evidence and argument (the 45th day falls on a Saturday). Because of C&G's failure to submit timely discovery responses, Morris asks the Board to extend the deadline for its supplemental submission to 30 days from the date that the Board issues a decision on this motion to compel. *See* STB Finance Docket No. 34540, *The Columbus & Ohio Rail Road Company—Acquisition and Operation Exemption—Rail Lines of CSX Transportation, Inc.*, 2005 STB Lexis 111, *6 (Served Feb. 22, 2005). Absent such an extension, C&G will be able to “run out the clock” by unilaterally giving itself the benefit of the erroneous motion to quash that it submitted in this proceeding on April 18, 2005.

III. CONCLUSION.

For the foregoing reasons, Morris respectfully moves the Board for an order compelling C&G to respond to its First Set of Discovery Requests and for an extension of time to supplement its petition to revoke.

Respectfully submitted,



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.*

May 3, 2005

CERTIFICATE OF SERVICE

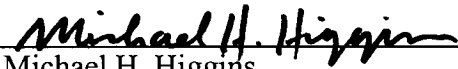
I hereby certify that I have this day served copies of this "Motion to Compel" upon all parties of record in this proceeding, as indicated below:

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

May 3, 2005

TAB 1

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

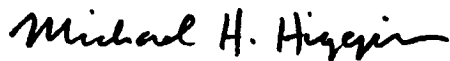
RE: Finance Docket No. 34666, *Columbus and Greenville Railway Co. – Verified Notice of Exemption – Acquisition and Operation of 2.99 Miles of Newly Constructed Track in Greenwood, Leflore County, MS*

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 of 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.

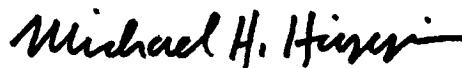
7. Identify and fully describe any contribution made by, or on behalf of C&G to the construction of the bypass track, other than a financial contribution, including any contribution of materials, supplies, equipment, labor, machinery, manpower, or know-how.
8. Identify the total cost of construction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



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.*

Dated: April 1, 2005