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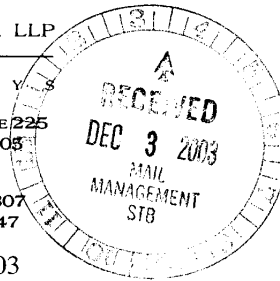
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December 3, 2003



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Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, D. C. 20423

ENTERED
Proceedings

2003

Part of
Public Record

RE: Finance Docket No. 34421, *HolRail LLC-Petition for Exemption from 49 U.S.C. § 10901 to Construct and Operate a Rail Line in Orangeburg and Dorchester Counties, South Carolina*

Dear Secretary Williams:

Enclosed are the original and 10 copies of a Motion to Dismiss Notice and three discs with the file Motion.

Please time and date stamp the additional copy of this letter and the Motion, and return them to our messenger. Thank you for your assistance.

If you have any questions, call or email me.

Sincerely yours,

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

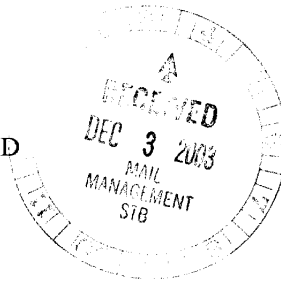
Enclosures

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34421



HOLRAIL LLC-PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT
AND OPERATE A RAIL LINE IN ORANGEBURG AND DORCHESTER COUNTIES,
SOUTH CAROLINA

MOTION TO DISMISS OF CSX TRANSPORTATION, INC.

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: December 3, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34421

HOLRAIL LLC-PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 TO CONSTRUCT
AND OPERATE A RAIL LINE IN ORANGEBURG AND DORCHESTER COUNTIES,
SOUTH CAROLINA

MOTION TO DISMISS OF CSX TRANSPORTATION, INC.

CSX Transportation, Inc. ("CSXT") moves the Surface Transportation Board (the "Board") to dismiss the Petition filed by HolRail LLC ("HolRail") on November 13, 2003, to construct a new line of railroad in Orangeburg and Dorchester Counties, SC. CSXT would normally provide a more detailed description of the line proposed to be built, but the Petition filed by HolRail contains no information other than HolRail's desire to construct a line of railroad to serve one cement plant of its parent corporation, Holcim (US) Inc. ("Holcim"). The lack of information has caused CSXT to file this Motion to Dismiss because of the very real possibility that HolRail's construction could physically interfere with and damage CSXT's operations.

The CSXT rail line that serves Holcim today traverses about 6,500 feet through the Four Hole Swamp on a narrow right-of-way. To the west of the line, South Carolina has built State Highway 453, about 20 feet west of the center-line of the rail line. On the east, the CSXT right-of-way extends only 40 feet from the center line of the track. Through Four Hole Swamp, CSXT's line is built on moist swamp land, conditions that render the subsurface considerably less stable than in drained areas. Any disruption of the physical base supporting CSXT's track

would disrupt operations and require very expensive repairs. Indeed, CSXT can foresee an instance where, as a result of HolRail's construction in CSXT's right-of-way, that the CSXT rail line is undermined and that the next train to use the CSXT track derails because of HolRail's construction activities.

CSXT contends that where a rail line is proposed to be built that could physically damage or destroy the rail line of a competitor, the party seeking the new construction has the burden of demonstrating that its planned construction will not cause physical damage. HolRail has utterly failed to do this. The petition is HolRail's case-in-chief¹ and has failed to present any details of the construction whatsoever. Even such basic information as the exact length of the proposed line is missing. The Petition, page 6, states that "Holcim desires to construct a two-mile rail line." CSXT believes that the line HolRail purportedly wants to build would be closer to three miles long than two – a matter of limited substantive significance, but emblematic of the woefully incomplete presentation in the Petition.

HolRail chose to file a Petition for Exemption under the Board's rules at 49 C.F.R. Part 1121. "A party filing a petition for exemption shall provide its case-in-chief, along with its supporting evidence, workpapers, and related documents at the time it files its petition." 49 C.F.R. § 1121.3(a). HolRail's description of the proposed construction is limited to stating that a two-mile line of rail will be constructed from Holcim's Holly Hill facility to a connection with a line of the Norfolk Southern Railway Company ("NS"); over either CSXT's right-of-way or a few hundred feet east or west of CSXT's line.²

¹ 49 C.F.R. § 1121.3(a).

² Page 6 of the Petition refers to building a line "only a few hundred feet to the West of the existing CSX line." However, the very next sentence on page 7 of the Petition states that

Further, the Petition also provides none of the information required in a construction application (see 49 C.F.R. § 1150.4-.6), such as: a detailed description of the proposal, a map clearly delineating alternatives, proposed connecting points with other railroads, principal terms of agreements with railroads covering operation, interchange of traffic, divisions of rates or trackage rights, traffic projection studies, schedule of operations, crew and rolling stock requirements, expected operating economies, and financial information. HolRail has presented none of this information in its petition, which is required to be its “case-in-chief.” 49 C.F.R. § 1121.3(a).

Indeed, HolRail can’t make up its mind where it might build its alternative routes. Page 6 of the Petition refers to building a line “only a few hundred feet to the West of the existing CSX line.” However, the very next sentence on page 7 of the Petition states that “HolRail has identified an alternate (sic) route that would run parallel to the CSX line, approximately 50 yards to the east.”

HolRail does not indicate that CSXT will make its property available to HolRail, and indeed, CSXT will not. HolRail does not specify where it may build its alternate line. Nor does HolRail even describe the type of railroad line that it will build. HolRail has also failed to specify where it will connect with NS, whether it has access to NS over the property of Giant Cement, a competitor of Holcim, and whether NS can even physically interchange with HolRail at the point of connection.

But the Petition offers yet a third “proposed route” to which less than a sentence is committed. Indeed, HolRail appears to ground its entire proposal on that alternative:

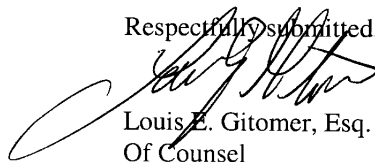
“HolRail has identified an alternate route that would run parallel to the CSX line, approximately 50 yards to the east.”

confiscation of CSXT's rail corridor property and states that "if necessary, HolRail intends to file a petition to cross the CSX right-of-way, pursuant to 49 U.S.C. § 10901(d), in order to construct the proposed rail line along the preferred route." Petition at 6, footnote 2. The "preferred route" is on CSXT's right-of-way for the entire length of the railroad. If this is a serious proposition, then it must be pointed out immediately that HolRail does not intend to cross the railroad line of CSXT. It rather urges a bizarre interpretation of the provisions of 49 U.S. C. § 10901(d) to obtain ownership and control of a large portion of CSXT's right-of-way. The definitions of the word "cross" include "intersect" and "not parallel." If HolRail is to be taken seriously, HolRail has raised an issue of first impression before the Board, which requires a full record with much more detailed information than that provided in the Petition before CSXT can fully respond and the Board can rule.

CSXT urges the Board to dismiss the petition filed by HolRail for failing to provide a case-in-chief as required under 49 C.F.R. § 1121.3(a), for failing to produce any meaningful evidence as to the planned construction, for failing to provide any evidence for CSXT to evaluate the effect on its tracks and sub-surface, and for failing to provide any basis for CSXT to respond to the proposed crossing petition and for the Board to rule on such petition.

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Respectfully submitted,



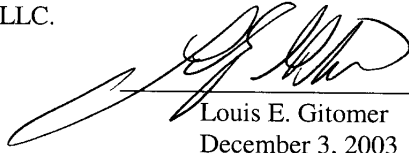
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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: December 3, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Motion to Dismiss to be served by first class mail,
postage pre-paid on Counsel for HolRail LLC.



Louis E. Gitomer
December 3, 2003