

May 10, 2005

Via Hand Delivery

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

213956
ENTERED
Office of Proceedings

MAY 11 2005

Part of
Public Record



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 for Expedited Consideration of its Request for an Extension of Time" 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

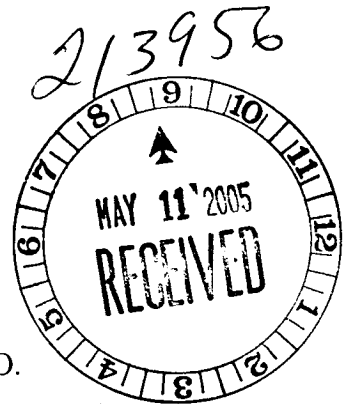
Jeffrey O. Moreno
Michael H. Higgins
Counsel for Complainant

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 FOR EXPEDITED CONSIDERATION OF ITS
REQUEST FOR AN EXTENSION OF TIME**



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Pursuant to 49 C.F.R. § 1117.1, Morris Recycling, Inc. ("Morris"), by and through its undersigned counsel, hereby submits this Motion for Expedited Consideration of its Request for an Extension of Time, which was contained in the Motion to Compel that Morris filed in this proceeding on Tuesday, May 3, 2005. As explained below, good cause exists for immediate consideration of Morris's extension request and for granting a reasonable, 30 day extension of the 45 day period provided by 49 C.F.R. § 1121.2 for Morris to supplement its Petition to Revoke, running from the date that the Columbus & Greenville Railway Co. ("C&G") responds to Morris's First Set of Discovery Requests.

I. GOOD CAUSE EXISTS FOR IMMEDIATE CONSIDERATION OF MORRIS'S REQUEST FOR AN EXTENSION AND FOR GRANTING THE REQUEST.

A. The Board should not reward C&G's "Bait and Switch" Tactics.

Morris submits that it would be fundamentally unfair to allow C&G to benefit from its deceptive and dilatory conduct during discovery in this proceeding. Since filing its Petition to Revoke on March 30th, Morris has diligently pursued this case in order to prevent its Greenwood

recycling facility from losing rail service as a result of the “like kind exchange” between C&G and the City of Greenwood. On April 1st, Morris promptly served its First Set of Discovery Requests on C&G in order to obtain relevant information for purposes of bolstering its petition. On April 12th, C&G indicated that it would respond to Morris’s first discovery, but requested a 17 day extension to do so, which Morris immediately granted as a professional courtesy, so long as the grant was not procedurally prejudicial to Morris. *See* Letter from J. Moreno to W. Cole dated April 12, 2005, attached at Tab 1. Six days later, on April 18th, C&G reversed course and filed a Motion to Quash (to which Morris replied on April 20th). On May 3rd, after C&G failed to respond to discovery by the extended due date, Morris filed its Motion to Compel. Later that day, C&G contacted Morris and stated that, despite its pending Motion to Quash, it had identified three file folders of responsive documents that it would produce. Although C&G initially stated that it would require Morris’s counsel to review the documents in Columbus, Mississippi, it subsequently agreed to provide photocopies to counsel in Washington, D.C. To date, C&G has not provided *any* material to Morris, nor has it indicated when it will do so. *See* Letter from J. Moreno to W. Cole dated May 9, 2005, attached at Tab 2.

Plainly, C&G has attempted manipulate the Board’s rules to deny Morris its right to be fully heard on all of the issues that have been raised in this proceeding. C&G should not be rewarded for its deceptive and dilatory tactics by being allowed to run out the 45 day time period that Morris has under 49 C.F.R. § 1121.2 to supplement its Petition to Revoke. Under these circumstances, the Board should give immediate consideration to Morris’s request for an extension and an extension should be granted.

B. Morris will face severe prejudice if it is forced to supplement its petition to revoke without the benefit of discovery.

Given that the Board's regulations at 49 C.F.R. Part 1121 expressly provide the petitioner in a revocation proceeding with the right to use information obtained in discovery to supplement its petition, Morris will be severely prejudiced if it is forced to make its supplemental filing by May 16th *without* the benefit of responsive information provided by C&G. This is especially true in this case because information in C&G's possession likely bears on arguments that C&G itself has raised, such as its *post hoc* characterization of its "like kind exchange" as an exempt track relocation and its challenge to Morris's standing as a shipper.

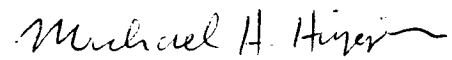
Presently, Morris faces a Catch-22: it can supplement its petition *without* access to relevant information in C&G's possession *or* in anticipation of a favorable decision on its Motion to Compel it can allow the May 16th deadline to pass at the risk of being barred by 49 C.F.R. § 1121.2 from submitting such information to the Board.¹ A decision on the extension that Morris previously requested will resolve the Hobson's choice that Morris currently faces and (presumably) allow it to supplement its petition with the benefit of discovery. Thus, immediate consideration of Morris's request for an extension is justified to prevent severe prejudice.

II. CONCLUSION.

For the foregoing reasons, Morris respectfully moves the Board to immediately consider its request for an extension of time and to grant it 30 days to supplement its petition to revoke, running from the date that C&G responds to Morris's First Set of Discovery Requests.

¹ C&G's reply to Morris's Motion to Compel is not due until May 23rd. If C&G takes the full twenty days allowed under 49 C.F.R. § 1104.13 to reply, the *earliest* date that Morris could have a decision from the Board is May 24th—a week *after* Morris's supplemental filing is due.

Respectfully submitted,

A handwritten signature in black ink, reading "Michael H. Higgins" with a stylized flourish at the end.

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

May 10, 2005

*Attorneys for
Morris Recycling, Inc.*

CERTIFICATE OF SERVICE

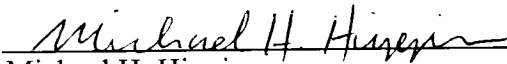
I hereby certify that I have this day served copies of this "Motion for Expedited Consideration of its Request for an Extension of Time" upon all parties of record in this proceeding, as indicated below:

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 10, 2005

Tab 1

April 12, 2005

Wandaleen P. Cole, Esq.
Columbus and Greenville Railway
P.O. Box 6000
Columbus, MS 39703

RE: Finance Docket No. 34666, Columbus and Greenville Railway Co.
Verified Notice of Exemption

Dear Ms. Cole:

Per your letter today requesting an extension of time, I hereby grant your request with the understanding that this is without prejudice to Morris Recycling. The responses to our discovery requests will be due on May 2, 2005.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Jeffrey O. Moreno

Tab 2

May 9, 2005

By Fax 410-467-2936

Wandaleen P. Cole
STB Counsel
Columbus and Greenville Railway Co.
201 19th Street
Columbus, Mississippi 39703

RE: STB 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 Ms. Cole:

I am writing in response to your correspondence of Friday, May 6, 2005, regarding Morris Recycling Inc.'s efforts to preserve rail service for its Greenwood, Mississippi facility. Although you state that C&G would be interested in developing business from Morris, you condition discussion of such business upon Morris's withdrawal from STB Finance Docket No. 34666. While Morris remains amenable to amicable negotiations to preserve common carrier rail service, Morris will neither withdraw from this proceeding, nor relinquish any other right available by statute or common law—including its right to participate fully in any future abandonment proceedings—as a condition precedent to settlement discussions.

Morris emphasizes that it is very serious about retaining and growing rail service at the Greenwood facility. Indeed, in recent communications between Morris and C&G, Morris stated that it has retained the services of a rail contractor for purposes of upgrading the spur into its facility in order to ship railcars later this very month. While Morris takes issue with C&G's assertion that the spur must meet FRA Class 1 track standards, it is committed to performing any upgrade that reasonably may be required.

In addition, as you are aware, you called me during the afternoon of Tuesday, May 3rd in order to advise me that you had viewed Morris's motion to compel on the STB website. You stated that C&G had approximately three file folders of documents which are responsive to Morris's First Set of Discovery Requests and that C&G was willing to make those documents available to Morris. As you know, your recent correspondence makes no reference to C&G's offer and, as of this date, Morris has not received any responsive materials. C&G's delay has cost Morris another seven days of the 45 day period allowed under 49 C.F.R. § 1121.2 to supplement its petition to revoke with information obtained through discovery. Morris requires C&G's immediate and definitive response as to whether, when, and how it will make responsive materials available. At this point, C&G has left Morris no choice but to pursue both its motion to

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May 9, 2005

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compel and its motion for an extension of the time period allowed to supplement its petition to revoke.

I hope that C&G will reconsider its positions on negotiating with Morris and on granting a reasonable extension of the 45 day time period permitted by 49 C.F.R. § 1121.2.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey O. Moreno', written in a cursive style.

Jeffrey O. Moreno