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December 17, 2018

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

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Office of Proceedings
December 17, 2018
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Public Record

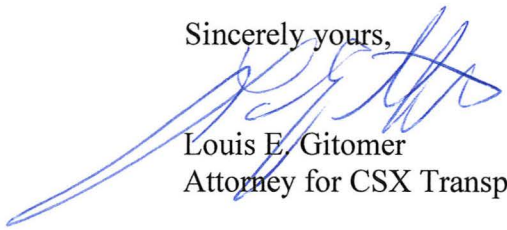
Re: **Docket No. AB-55 (Sub-No. 785X), CSX Transportation, Inc.—
*Discontinuance of Service Exemption—in Vermilion County, IL***

Dear Ms. Brown,

Enclosed is the CSX Transportation, Inc., reply to the Vermillion Valley Railroad
Petition to Reject and/or Stay. CSXT is efilng this reply.

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

Sincerely yours,



Louis E. Gitomer
Attorney for CSX Transportation, Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 785X)

CSX TRANSPORTATION, INC.– DISCONTINUANCE OF SERVICE EXEMPTION–
IN VERMILLION COUNTY, IL

REPLY TO VERMILLION VALLEY RAILROAD’S PETITION TO REJECT AND/OR STAY

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Attorneys for: CSX TRANSPORTATION,
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Dated: December 17, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 785X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—
IN VERMILION COUNTY, IL

REPLY TO VERMILLION VALLEY RAILROAD’S PETITION TO REJECT AND/OR STAY

CSX Transportation, Inc. (“CSXT”) respectfully requests that the Surface Transportation Board (the “Board”) deny the Petition of Vermillion Valley Railroad, Inc. (“VVRR”) to Reject and/or Stay (the “Petition”) because VVRR has provided no factual or legal basis for the relief it seeks.¹

Background

On November 13, 2018, CSXT filed a Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1152.50 for CSXT to discontinue service over an approximately 3.6-mile rail line on its Woodlands Subdivision between Milepost QSK 0.0 and Milepost QSK 3.6, the end of the line in Vermilion County, IL (the “Line”).² The Board, through the Director of the Office of Proceedings, served a Notice of Exemption in this proceeding on December 3, 2018. VVRR filed the Petition on November 30, 2018.

¹ VVRR has made several offers to CSXT to acquire either Hillery Yard or the Line. CSXT has rejected all of the offers.

² The abandonment by CSXT of the line adjoining the Line to the west between mileposts QSK 3.6 and QSK 4.0 at the end of the track, in Danville, Vermillion County, IL was exempted. *CSX Transportation, Inc.-Abandonment Exemption-Vermillion County, Ill.*, Docket No. AB-55 (Sub-No. 714X) (served February 22, 2012). The

No traffic has moved over the Line since at the latest 2001.³ CSXT does not store cars on the Line. There are no major industries located on the Line and no potential shippers have inquired of CSXT about the actual or potential need for rail access over the Line. The Line is stub ended at milepost QSK 3.6. The Line includes Hillery Yard between mileposts QSK 2.0 and QSK 2.5 (the “Yard”).⁴

CSXT recently hired a contractor to remove yard tracks in its Hillery Yard, located between mileposts QSK 2.0 and QSK 2.5. Because this was yard track, CSXT did not seek authority for removal of the yard track from the Board.⁵ In the process of removing yard track, CSXT’s contractor mistakenly removed part of the mainline that connected both ends of the Yard with the remainder of the Line. VVRR contacted the Board’s Office of Public Assistance, Governmental Affairs, and Compliance (“OPAGAC”) regarding the removal of the Yard.⁶ OPAGAC contacted CSXT and CSXT repaired the Line.. CSXT notified OPAGAC on November 2, 2018, that reconnection of the track into a continuous line between QSK 0.0 and Milepost QSK 3.6, including Hillery Yard had been completed on that date. CSXT did not file the discontinuance notice of exemption until November 13, 2018, when there was continuous track between the endpoints of the Line. As shown in the picture in Exhibit B, the Line is intact. VVRR is not a shipper. VVRR is the operator of a 5.91-mile rail line owned by FNG Logistics Co. (FNG) between milepost QSO-5.18 near the Illinois/Indiana State line and milepost QSO-

abandonment was consummated by a letter filed with the Board on April 19, 2012. Because of this abandonment, there could be no through traffic on the Line.

³ CSXT’s database only goes back to 2001. CSXT believes that traffic stopped moving over the Line prior to 2001.

⁴ See the attached Verified Statement of Mr. Payne.

⁵ Yard track is excepted under 49 U.S.C. 10906 from the need to obtain Board authority for abandonment. See *Joseph R. Fox—Petition for Declaratory Order*, FD 35161 (STB served May 18, 2009), *aff’d Fox v. STB*, 379 Fed.□Appx. 767 (10th Cir. 2010).

11.09 near Olin, in Vermillion and Warren Counties, IN (the “VVRR Line”).⁷ The VVRR line does not physically connect to the Line, it is several miles to the east of the eastern end of the Line.

CSXT’s Notice of Exemption Does Not Contain False or Misleading Information

VVRR’s disjointed argument ignores the facts and the timing of events. Track was mistakenly removed and then replaced. Both events occurred before the Notice of Exemption was filed. The statements in the Notice of Exemption were accurate at the time it was filed and are still accurate today.

When removing yard track from Hillery Yard, CSXT’s contractor removed too much track, essentially breaking the connectivity of the Line. Once notified, CSXT immediately took steps to replace the track that had been removed in order to have a continuous line in place. Replacement of the track was completed by November 2, 2018. Even during the brief period when the Line was not continuous, no shipper was denied service. There has been no request for service over the Line and through Hillery Yard since at the latest 2001.

Prior to filing its Notice of Exemption, CSXT replaced the material removed by its contractor to ensure the Line was a complete rail corridor. The track and ties were in poor condition prior to being removed by the contractor, it would have been irresponsible to replace the removed ties and track with new material, as VVRR suggests. From the time CSXT filed its Notice of Exemption and at all times following, CSXT has not attempted to remove the

⁶ Counsel for VVRR notified counsel for CSXT on October 19, 2018 of the purported removal of track at which time the CSXT Manager of Strategic Planning, Mr. Payne, looked into the allegation and CSXT began to take remedial action.

⁷ *Vermilion Valley Railroad Company, Inc.—Operation Exemption—FNG Logistics Co.*, Finance Docket No. 34340 (served May 16, 2003).

infrastructure that is on the ground. Simply because VVRR wishes CSXT to upgrade the Line does not make CSXT's statement misleading.

In one breath on page 5, VVRR states "Here the misleading information is CSX's representation that the Line is intact or, to the extent previously dismantled, has been restored." In the next breath on page 6, VVRR states that "But the fact remains that the remaining track was removed **even if CSX recently restored it** (emphasis added)." CSXT did not start the discontinuance process until the track had been restored. The Notice of Exemption was filed after the track had been replaced, as admitted by VVRR. The statement on pages 4-5 of the Notice of Exemption was and remains accurate that "Once discontinuance of service is authorized, CSXT will remove the signals but leave the remaining infrastructure in place to preserve the corridor in case business returns. Since service on the Line is being discontinued and not abandoned and CSXT is retaining the Line for future reactivation if demand for rail service resumes, the Line is not available for public use purposes." The through track in Hillery Yard was in place at the time the Notice of Exemption was filed, is still in place today, and CSXT will not remove the track unless and until CSXT seeks and receives abandonment authority from the Board.

Moreover, despite VVRR's assertions, CSXT is "not salvaging the tracks." CSXT's yard contractor accidentally removed rail material in the Yard that disconnected the eastern and western segments of the Line through the Yard. When brought to CSXT's attention, CSXT replaced the material necessary to make the Line a complete rail corridor. The Line was a complete rail corridor prior to CSXT filing for discontinuance authority and remains a complete rail corridor. There is nothing false or misleading in CSXT's Notice of Exemption.

VVRR's claim that CSXT provided false and misleading information in the Notice of Exemption is wrong. VVRR has provided no basis for the Board to reject the Notice of Exemption.

The Board Does Not Need to Compel CSXT to Replace the Tracks

VVRR asserts, on page 8, that "the Board has the power to compel CSXT to restore previously salvaged portions of the Line" and therefore the Notice of Exemption should be rejected as controversial. VVRR is overreaching..

CSXT restored the continuous Line upon learning that a contractor had mistakenly severed the through line and an informal request from the Board. There is nothing controversial about CSXT expeditiously complying with an informal request from the Board that resolves a technical problem.⁸

Unlike *Colorado Wheat Administrative Committee, et al v. V and S Railway, LLC*, Docket No. NOR 42140 (served May 7, 2015) ("*Colorado Wheat*"), which VVRR relies on, CSXT willingly restored the track on the Line prior to filing for discontinuance. At the time CSXT filed for discontinuance, the Line was intact and remains intact now. VVRR may not like the condition of the track or the removal of the yard track, but CSXT's actions have not disrupted service to any shipper. In *Colorado Wheat*, the Board found information in the record to support a claim that there was a demand for rail service. The Line has not been used since at the latest 2001. VVRR has not shown any demand for service. In fact, there are currently no potential shippers on the Line.

⁸ The request to reconnect the Line did not come from a shipper that had lost service, but from a disgruntled competitor of CSXT whose offers to acquire the Line have been consistently rebuffed by CSXT.

The Board has stated in *Norfolk Southern Railway Company-Abandonment Exemption-in Aurora, Portage County, Ohio*, Docket No. AB 290 (Sub-No. 394X) slip op. at 4-5 (served March 30, 2018:

If there is no shipper actively seeking service, notwithstanding the common carrier obligation the “carrier is not required to repair or replace missing or damaged track over a portion of line that is not currently needed for rail service.” Kan. City S. Ry.—Aban. Exemption—Line in Warren Cty. Miss., AB 103 (Sub-No. 21X), slip op. at 9 (STB served Feb. 22, 2008); see also Atchison, Topeka & Santa Fe Ry.—Aban. Exemption—in Lyon Cty. Kan., AB 52 (Sub-No. 71X), 1991 WL 120344, at *3 (ICC decided June 11, 1991).[fn omitted] Thus, the removal of signals or track or the paving over of crossings does not necessarily constitute an unauthorized abandonment or discontinuance, nor does it render the notice here void ab initio. San Pedro R.R., AB 1081X, slip op. at 5; Kan. City S. Ry., AB 103 (Sub-No. 21X), slip op. at 9. Removal of the track has no effect on the regulatory status of the line. San Pedro R.R., AB 1081X, slip op. at 5.

With regard to the Hillery Yard track, Board precedent is clear that CSXT does not need to seek Board authority to remove its yard track and VVRR cannot demand the yard track be restored because it wants to purchase CSXT’s Yard.⁹

There is Nothing Controversial About This Proceeding

This is a straight forward discontinuance. The controversy has been created by VVRR’s spurious Petition. There has been no traffic over the Line since at the latest 2001, and in CSXT’s view, a request for service over the Line is so remote as to be non-existent. VVRR has provided no evidence that there are any shippers interested in using the line. VVRR states that it sees a business opportunity to use the Line and Hillery Yard as a “staging area to develop new freight business....” Petition at 8. It does not state that it intends to use the Line for through traffic. VVRR is manufacturing a controversy where none exists.

⁹ *Joseph R. Fox—Petition for Declaratory Order*, FD 35161 (STB served May 18, 2009), *aff’d Fox v. STB*, 379 Fed. Appx. 767 (10th Cir. 2010).

VVRR would like to buy CSXT's Line and Hillery Yard. CSXT has rejected VVRR's attempts to purchase the Line and Yard. VVRR's interest in the Line does not make this proceeding controversial. As the Board has said, "The focus of the inquiry under the Board's two-year out-of-service exemption regulations (49 C.F.R. part 1152, subpart F) is whether there has been any service or request for service on the line in the last two years, not the condition of the track." *Norfolk Southern Railway Company-Abandonment Exemption-in Aurora, Portage County, Ohio*, Docket No. AB 290 (Sub-No. 394X) slip op. at 5 (served March 30, 2018).

VVRR Has Not Justified a Stay of the Notice of Exemption

In ruling on a petition for a stay, the Board considers: (1) whether the party seeking the stay has made a strong showing that it is likely to prevail on the merits; (2) whether the party seeking the stay will suffer irreparable harm in the absence of a stay; (3) whether other interested parties will be substantially harmed by a stay; and (4) the public interest in granting or denying the stay. *See Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

VVRR has not shown that it is likely to prevail on the merits. VVRR has no right to dictate or demand the condition of the Line. CSXT completed restoring the Line to a through route on November 2, 2018 and did not file for discontinuance authority until November 13, 2018. CSXT restored the Line as a through route before it filed a Notice of Exemption with the Board. It is operation over the through route that CSXT is seeking to discontinue.

VVRR has not shown that it will be irreparably harmed if the Notice of Exemption is allowed to become effective. VVRR asserts that it and unnamed shippers it proposes to serve will suffer irreparable harm because “Restoring the salvaged track would be prohibitively expensive for VVRR or its potential customers.” Petition at 10. VVRR is attempting to show future monetary harm on the premise that it will one day acquire the line and will have to restore the track. VVRR has not suffered any harm as a result of the discontinuance. The failure of VVRR to acquire the Line is also not the result of a proceeding before the Board. “A preliminary injunction is an extraordinary remedy and will generally not be granted unless the requesting party shows that it faces ‘unredressable actual and imminent harm.’ *N. Coast R.R. Auth.*, NOR 42148, slip op. at 3 (citing *Am. Chemistry Council*, NOR 42129, slip op. at 4).” *Union Pacific Railroad-Petition for Declaratory Order and Preliminary Injunction*, Docket No. FD 36197, slip op. at 4, (served June 29, 2018). VVRR is seeking a stay based solely on monetary harm. “The Board has consistently held that monetary or economic loss by itself does not constitute irreparable harm.” *Id.* The through route has not been salvaged, CSXT replaced materials on the Line to restore the through route prior to filing for discontinuance. Even assuming that a portion of the Line was missing, which it is not, VVRR is talking about 0.5-miles of the Line. The Line may not be restored to VVRR’s liking but that is irrelevant. In addition, VVRR does not explain how the public interest supports a stay. Again, the key factor is that there has been no traffic over the Line for at least 17 years.

CSXT requests that the Board deny the stay request because neither the facts nor the law justify such a request.

The is No Basis for Mediation.

VVRR requests that the Board sponsor mediation because of the “unusual nature of this proceeding and the unnecessarily acrimonious relationship that appears to have developed between the parties.” Petition at 10.

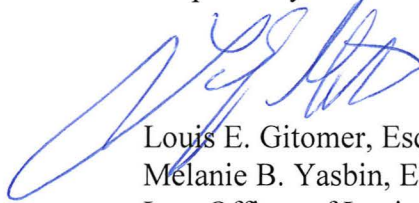
CSXT is unwilling to engage in mediation with VVRR.

In addition, the only “unusual nature” of this proceeding has been caused by VVRR’s inaccurate and unsupported claims and lack of legal foundation. If there is an “acrimonious relationship,” it is solely on VVRR’s part as a suitor that has been rebuffed.

Conclusion

CSXT requests that the Board reject VVRR’s Petition and allow the Notice of Exemption to become effective on January 2, 2019.

Respectfully submitted,



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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: December 17, 2018

EXHIBIT A-Verified Statement of Mr. Payne

CSX TRANSPORTATION, INC.– DISCONTINUANCE OF SERVICE EXEMPTION–
IN VERMILLION COUNTY, IL

VERIFIED STATEMENT OF FLOYD PAYNE

My name is Floyd Payne. I am Manager Strategic Planning for CSX Transportation, Inc. (“CSXT”). In this position, I am responsible for analyzing and recommending railroad lines for abandonment or discontinuance. I am familiar with the Notice of Exemption filed on November 13, 2018 pursuant to the class exemption at 49 C.F.R. § 1152.50 for CSXT to discontinue service over an approximately 3.6-mile rail line on its Woodlands Subdivision between Milepost QSK 0.0 and Milepost QSK 3.6, the end of the line in Vermilion County, IL (the “Line”).

Prior to the filing of the Notice of Exemption, I was involved in restoring the connectivity of the Line that had been severed by the mistaken removal of track in Hillery Yard by a contractor hired by CSXT. On November 2, 2018, prior to CSXT reporting to the Board, I verified that the Line had continuous railroad track from Milepost QSK 0.0 and Milepost QSK 3.6, including Hillery Yard, between mileposts QSK 2.0 and QSK 2.5 (the “Yard”) as shown in the picture in Exhibit B to the Reply.

After the Petition of Vermillion Valley Railroad, Inc. (“VVRR”) to Reject and/or Stay (the “Petition”) was filed on November 30, 2018, I took the following actions: (1) I reviewed the information supplied from the CSX database that goes back to 2001 and determined that there had been no traffic that originated or terminated on the line during the timeframe from 2001 to 2018; (2) contacted the CSXT Industrial Development Group

and determined that there are no major industries along the line that have inquired about or any that would have the potential of needing rail access; and (3) determined that CSXT has no available records for cars being stored on the line. In addition, I reconfirmed that the track had been replaced as shown in the attached photograph.

I am aware that VVRR has made requests to CSXT to acquire the Line or Hillery Yard and that any offers were rejected.

VERIFICATION OF FLOYD PAYNE

I Floyd Payne, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on December 17, 2018.


Floyd Payne

EXHIBIT B
Overhead View of Hillery Yard



CERTIFICATE OF SERVICE

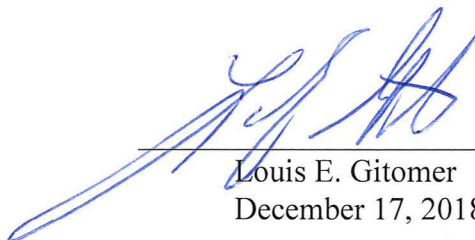
I, hereby certify that on December 17, 2018, a copy of the foregoing "Reply to Petition of Vermillion Valley Railroad to Reject and/or Stay" was served:

By email on

John D. Heffner
jheffner@ClarkHill.com

By US mail postage prepaid on

Kenneth T. Clifford
11817 Choctaw Drive
Medway, OH 45341-9736



Louis E. Gitomer
December 17, 2018