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October 22, 2018

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings
October 22, 2018
Part of
Public Record

Re: Docket No. FD 36220, *CSX Transportation, Inc.—Lease—Western and
Atlantic Railroad*

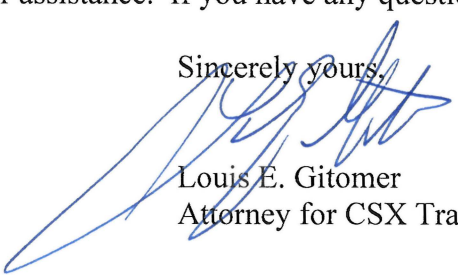
Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a minor Application for CSX Transportation, Inc. ("CSXT") to lease a 137.33-mile railroad line from the Western and Atlantic Railroad ("W&A") between Central Avenue in the City of Atlanta, GA, milepost 0, and Union Station in the City of Chattanooga, TN, milepost 137.28 (the "Line"), in order to continue operations that CSXT and its predecessors have conducted over the Line since 1890.

A diskette containing a WORD and pdf version of the Application is attached. The diskette also contains the Lease Agreement. CSXT will supply paper copies of the Lease if requested by the Board. A check for the filing fee of \$8,500 for the Application is enclosed.

Please time and date stamp the extra copy of the filing and return with our messenger. Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,


Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosures

FILED
October 22, 2018
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
October 22, 2018
SURFACE
1 TRANSPORTATION BOARD



BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36220

CSX TRANSPORTATION, INC.—LEASE—
WESTERN AND ATLANTIC RAILROAD

APPLICATION

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Attorneys for: CSX Transportation, Inc.

Dated: October 22, 2018



BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36220

CSX TRANSPORTATION, INC.— LEASE—
WESTERN AND ATLANTIC RAILROAD

APPLICATION



CSX Transportation, Inc. (“CSXT”) files this minor application¹ pursuant to 49 U.S.C. §11323(a)(2) and 49 C.F.R. §1180 seeking approval from the Surface Transportation Board (the “Board”) for CSXT to enter into a lease (the “Lease”) over approximately 137.33 miles of the Western and Atlantic Railroad (“W&A”) between Central Avenue in the City of Atlanta, GA, and centerline of Interstate 24 in the City of Chattanooga, TN (the “Line”).² CSXT and its predecessors have leased the Line from the State of Georgia (the “State”) since 1890.³

The Application demonstrates that the Lease: (1) is a minor transaction; (2) will not result in a reduction in competition; and (3) will not result in significant changes in carrier operations requiring an environmental or historic assessment.

SUMMARY

CSXT and the State of Georgia, acting by and through the State Properties Commission (“Georgia”) have entered a Lease Agreement dated as of September 7, 2018 (the “Lease

¹ This Application is presented in one volume, which contains the application information and exhibits. Exhibit 2, the Agreement, is on the diskette included with each copy of the Application.

² See Map A in Exhibit 1.

³ The most recent lease of the Line by the Louisville & Nashville Railroad Company (the “L&N”), a predecessor to CSXT, was approved by the Interstate Commerce Commission. *Louisville & Nashville Railroad Co.-Lease-Western & Atlantic Railroad*, ICC Finance Docket No. 25051 (ICC served August 7, 1968).

Agreement”)⁴. The Lease Agreement establishes the terms and conditions for CSXT to occupy and continue to provide freight service over the Line. CSXT and its predecessors have leased and operated the Line since 1890. The Line runs 137.33 miles from Atlanta, GA, milepost 0, to the centerline of Interstate 24 in Chattanooga, TN, milepost 137.28, through Bartow, Catoosa, Cobb, Fulton, Gordon, and Whitfield Counties, GA and Hamilton County, TN, consisting of a right-of-way of typical width of 66 feet comprising approximately 1,550 acres. Pursuant to the Lease Agreement, Georgia has retained certain rights and reservations over the Line, except that it will not grant any right that would result in an encroachment into the operating envelope. The operating envelope is defined as the volume that is 23 feet vertically above top of rail and 18 feet horizontally to either side of the center line of existing track or track constructed during the 50-year term of the Lease Agreement. Sections 1.02 and 1.04.

CSXT and its predecessors have been the only railroads operating the Line since 1890. W&A does not operate over the Line. CSXT provides overhead and local service over the Line. The Norfolk Southern Railway Company (“NSR”) intersects with the Line in Chattanooga, TN, and Dalton, GA. CSXT interchanges traffic in Elizabeth, GA with the Georgia Northeastern Railroad Company, Inc. (“GNRR”). As part of the Lease, the interchange with GNRR will continue.

CSXT does not expect there to be a change in operations or in the number of employees working on the Line. The Lease will not result in an increase or decrease of railroad traffic on the Line. Nor does CSXT plan to dismiss or displace any employee as a result of the Lease.

⁴ Citation to “Sections” in this Application refer to sections of the Lease Agreement, unless otherwise specified.

I. THE LEASE IS MINOR TRANSACTION

The Lease is a minor transaction, as that term is defined in the Board's regulations at 49 C.F.R. §1180.2(c).

CSXT is a Class I railroad. W&A is a non-operating Class III railroad. Therefore, the Lease is not a major transaction because it does not involve the control or merger of two Class I railroads. See 49 C.F.R. §1180.2(a).

CSXT is leasing the Line. The Lease maintains the status quo to continue CSXT's long-standing occupancy of the Line and is not a control or merger transaction. Shippers will continue to be served by CSXT as they are today. NSR and GNRR will continue to operate pursuant to the rights that they have had in the past. The Lease will not result in reduced competitive options to shippers on the Line.

The Lease is the result of arms length bargaining between CSXT and Georgia. CSXT and W&A will remain independent of each other, will not merge, and neither will control or have the power to control the other.

CSXT contends that the Lease clearly will not have any anticompetitive effects. There will be no reduction in the number of railroads serving any shipper and no railroads will be foreclosed from interchange as a result of the Lease. There will be no 2-1 corridors or shippers.

The Lease is not a significant transaction as that term is defined in 49 C.F.R. §1180.2(b).

The statute and Board regulations treat a transaction that does not involve two or more Class I railroads differently depending upon whether or not the transaction would have "regional or national transportation significance." 49 U.S.C. § 11325. Under our regulations, at 49 C.F.R. § 1180.2, a transaction that does not involve two or more Class I railroads is to be classified as "minor"—and thus not having regional or national transportation significance—if a determination can be made that either: (1) the transaction clearly will not have any anticompetitive effects; or (2) any anticompetitive effects will clearly be outweighed by the anticipated contribution to the public interest in meeting significant transportation needs. A transaction not involving the control or merger of two or more Class I railroads is

“significant” if neither of these determinations can clearly be made.⁵

The Board went on to conclude that the acquisition of the 282.55-mile line “only involves rail lines in a relatively small geographic area of Pennsylvania and New York”⁶ and that “NSR has met its burden of proof in preliminarily showing that the” transaction “is a minor transaction.”⁷

The Board has determined that a transaction is minor when no “shipper would have fewer competitive rail alternatives as a result of the transaction.”⁸ Not only will CSXT continue to operate over the Line, but GNRR and NSR will retain their existing rights. Under the Lease, no shipper would have fewer competitive rail alternatives. The Lease will not have any anticompetitive effects.

CSXT respectfully requests the Board to find the Lease to be a minor transaction under 49 C.F.R. §1180.2(c).

PROPOSED SCHEDULE

CSXT proposes the following schedule in accord with the requirements of 49 U.S.C. §11325.

DATE	ACTION
October 22, 2018	Application filed with Board.
November 21, 2018	Board accepts application and establishes schedule.
November 28, 2018	Notices of intent to participate must be filed with the Board and served on CSXT. Discovery requests due to CSXT.
December 12, 2018	CSXT responds to discovery requests.

⁵ *Norfolk Southern Railway Company—Acquisition And Operation—Certain Rail Lines of the Delaware and Hudson Railway Company, Inc.*, Docket No. FD 35873. Slip op. at 7 (served December 16, 2014).

⁶ *Id.*

⁷ *Id.*

⁸ *CSX Transportation, Inc. and Delaware and Hudson Railway Company, Inc.—Joint Use Agreement*, STB Docket No. FD 35348, slip op. at 7 (STB served May 27, 2010).

December 21, 2018	Comments of the United States Attorney General and United States Secretary of Transportation due.
December 28, 2018	Comments due from all other parties due.
January 18, 2018	Reply to comments due from CSXT.
March 6, 2019	Close of record.
April 19, 2019	Board serves final decision.
May 20, 2019	Board decision becomes effective.

The proposed schedule provides the Board and parties with the statutorily mandated time periods. If there is no or minimal opposition, CSXT reserves the right to request the Board to expedite the schedule.

CSXT respectfully requests the Board to adopt the proposed schedule.

APPLICATION INFORMATION

Pursuant to the Board's regulations at 49 C.F.R. § 1180.4, CSXT submits the following information:

Section 1180.6 Supporting Information

The carriers involved in this transaction and their business addresses are:

CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202

Western & Atlantic Railroad
State Properties Commission
270 Washington Street SW
Suite 2-129
Atlanta, GA 30334
Attn: Deputy Executive Director

Questions and correspondence concerning this notice may be addressed to:

Steven C. Armbrust
CSX Transportation, Inc.

500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(401) 296-2250
Lou@lgraillaw.com

(ii) The proposed time schedule for consummation of the Lease.

Pursuant to the Lease Agreement, the transaction is scheduled to be consummated January 1, 2020.

(iii) The purpose sought to be accomplished by the Lease, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

CSXT is seeking authority from the Board to lease the Line from the State of Georgia. CSXT and its predecessors have leased the Line from the State since 1890, over 128 years. CSXT provides overhead and local rail service on the Line.

The Lease will allow CSXT to continue to provide service between Atlanta, GA, and Chattanooga, TN, along with local service to the shippers located on the Line. The Line provides the most efficient connection for CSXT between Atlanta, GA and portions of the eastern United States north and northwest of Atlanta. CSXT does not contemplate a change of operations or of the number of employees on the Line.

(iv) The nature and amount of any new securities or other financial arrangements.

No new securities will be issued in connection with the Lease. CSXT will pay monthly rent to Georgia.

(2) A detailed discussion of the public interest justifications in support of the application, indicating how the Lease is consistent with the public interest, with particular regard to the

relevant statutory criteria, including

(i) The effect of the transaction on inter- and intramodal competition, including a description of the relevant markets (see §1180.7). Include a discussion of whether, as a result of the transaction, there is likely to be any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States.

CSXT does not expect the Lease to result in any lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States. CSXT expects the transaction to be competitively neutral. CSXT and the State are entering into a long-term lease of the Line that CSXT has operated since 1890.

The Lease will not adversely impact competition. Competition with NSR between Atlanta and Chattanooga will be maintained at the current level. The Lease will not impact motor carriers operating between Atlanta and Chattanooga on Interstate 75. Nor will intermodal competition be affected at intermediate points.

The number of rail carriers serving each shipper on the Line will remain the same. The Lease will not result in a reduction in the number of competitive options for shippers. There are no instances where the Lease will result in any shipper served by two railroads being served by one railroad.

The Lease will not change rail operations or result in a reduction in rail service or competitive options. The Board has concluded that there would be “no adverse impact on competition” where a railroad acquired a line that it had been leasing.⁹

CSXT has over 120 years of experience in serving the shippers on the Line. Based on its experience, CSXT is well aware of the shippers needs and the level of service that is expected. CSXT intends to continue providing the requested service as a result of the Lease.

⁹ *V and S Railway, LLC-Acquisition and Operation-Colorado Department of Transportation*, Docket No. FD 35664, slip op. at 3 (served November 13, 2012). *See also, Finger Lakes Railway Corp.-Control Exemption-Ontario Central Railroad Corp.*, Docket No. FD 35062, slip op. at 2 (served October 5, 2007).

(ii) The financial consideration involved in the Lease, and any economies, to be effected in operations, and any increase in traffic, revenues, earnings available for fixed charges, and net earnings, expected to result from the consummation of the Lease.

Under the Lease Agreement, CSXT is paying Georgia a monthly rental of \$1,008,333.33. Rental will increase annually by 2.5% compounded. Sections 3.01 and 3.02. In addition, by July 31 of each year, CSXT shall pay Georgia additional rent consisting of 50% of the revenue generated from all agreements, subleases, easements, or licenses attributable to the Line for the previous year. Section 3.03.

(iii) The effect of the increase, if any, of total fixed charges resulting from the Lease.

CSXT is not financing the Lease of the Line. CSXT will not incur any fixed charges as a result of the Lease.

(iv) The effect of the Lease upon the adequacy of transportation service to the public, as measured by the continuation of essential transportation services by applicants and other carriers.

The Lease will maintain the status quo of the transportation services to rail customers now served by CSXT. CSXT will continue to serve shippers as it does today. CSXT will continue to provide essential transportation services as it has done since 1890. Essential services provided by other carriers will not be effected by the Lease.

Georgia has reserved rights that may require the relocation of track. CSXT is confident that its ability to provide adequate transportation service is protected by the terms of the Lease Agreement. Any track relocation will not “unreasonably interfere with the use by [CSXT] of the Leased Property, or unreasonably reduce [CSXT’s] operating capacity.” Section 1.04(c).

The Lease Agreement requires CSXT to “execute an interchange agreement with each connecting railroad....” Section 8.01. CSXT is also required to “comply with the provisions of all applicable federal, state and local laws, ordinance and regulations, subject to federal

preemption principles ... respecting the operation, condition, inspection and safety of trains ...”

Section 9.02. The Lease requires CSXT to “maintain the Leased Property to no less than Class III standards as designated by the Federal Railroad Administration.” Section 10.02.

Georgia has reserved the right to institute passenger rail service over the Line “subject to the mutual agreement of [Georgia] and [CSXT] with respect to the impact any such passenger rail may have upon the safety and capacity of, compensation for, and liability in connection with the [Line].” Section 11.01.

(v) The effect of the Lease upon applicant carriers’ employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

There will be no impact on CSXT employees or the employees of W&A. CSXT does not plan to change operations on the Line. The Lease will not result in CSXT employees being dismissed or displaced. There are no W&A employees on the Line.

As mandated by 49 U.S.C. § 11326, and in accordance with Board precedent, CSXT requests that the Board impose the labor protective conditions in *Mendocino Coast Ry., Inc.-Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980), as clarified in *Wilmington Term. RR, Inc.-Pur. And Lease-CSX Transp., Inc.*, 6 I.C.C.2d 799, 814-826 (1990) for the benefit of CSXT and W&A employees.

(vi) The effect of inclusion (or lack of inclusion) in the Lease of other railroads in the territory, under 49 U.S.C. 11324.

Inclusion is not available as a form of relief in a minor transaction. There is no basis for including another railroad in the Lease, since there will be no anticompetitive effects.

(3) Any other supporting or descriptive statements applicants deem material.

The Lease does not involve the merger or control of at least two Class I rail carriers. Therefore, the Board “shall approve” the transaction unless it finds both that:

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. § 11324(d).

Under the governing statutory criteria, the Board's primary focus is on the probable competitive effects of the Lease.¹⁰ The Board has stated that "our primary focus is on whether there would be adverse competitive impacts that are both likely and substantial."¹¹ The public interest factors are considered only where significant anticompetitive effects are found.¹² Since, as discussed above, there are no significant anticompetitive effects that will result from the Lease the Board does not need to consider the public interest factors.

A finding of competitive harm under Section 11324(d)(1) must be grounded on a showing that any adverse competitive effects are both "likely" and "substantial."¹³ Examples of adverse competitive impacts that would trigger the balancing of the public interest factors under Section 11324(d)(2) "would be the likelihood of significantly higher rates or significantly worsened service, or the likelihood of a combination of the two."¹⁴ The Lease will not increase CSXT's market power. The Lease will not result in either higher rates or worsened service. It will provide stability. CSXT is familiar with its customers needs and will continue to meet those needs from a rate and service perspective. More importantly, CSXT's customers are familiar

¹⁰ See, e.g., *Canadian Pacific Ltd., and Soo Line R.R.—Control—Davenport, Rock Island & North Western Ry.*, ICC Finance Docket No. 32579 (ICC served February 10, 1995), at 5; *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C. 2d 799, 803 (1990), *pet. for review denied sub nom. Railway Labor Executives Ass'n v. ICC*, 930 F.2d 511 (6th Cir. 1991).

¹¹ *Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company*, STB Finance Docket No. 35087, Decision No. 16, slip op. at 13 (STB served December 24, 2008)

¹² *Id.*

¹³ *Wisc. Central Transportation Corporation, et al.*, 9 I.C.C.2d 233, 238 (1992).

¹⁴ *Blackstone Cap. Partners—Cont. Exempt.—CNW Corp. et al.*, 5 I.C.C.2d 1015, 1019 (1989).

with CSXT, the service provided, the rates charged, and the people within CSXT to contact to resolve problems and to make arrangements for service. The Lease is the continuation of the *status quo*.

CSXT believes that the information furnished in this application adequately supports the Board's approval of this minor transaction under applicable statutory criteria and Board precedent. CSXT will furnish the Board with any information concerning the Lease that it may require, and will participate fully in the proceedings on the Lease that the Board deems appropriate.

(4) An opinion of applicants' counsel that the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the Board. This should include specific references to any pertinent provisions of applicants' bylaws or charter or articles of incorporation.

See Appendix 2.

(5) A list of the State(s) in which any part of the property of each applicant carrier is situated.

CSXT owns and operates about 21,000 miles of railroad in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, the District of Columbia, and the Canadian Provinces of Ontario and Québec.

The State of Georgia owns about 137.33 miles of railroad in the States of Georgia and Tennessee.

(6) Map (exhibit 1). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

See Exhibit 1 attached hereto. Exhibit 1 contains Map A showing the Line, Map B showing the CSXT system, including the Line, Map C showing the 2.32-mile long railroad line between milepost S.G. 581.61 and milepost S.G. 579.29 in Cobb County, GA (the “Silver Comet Line”),¹⁵ and Map D showing the 4.3-mile line between milepost S.G. 579.29 and milepost 575.00 in Cobb County, GA, that CSXT expects to abandon within three years.

(7) Explanation of the transaction.

(i) Describe the nature of the transaction (e.g., merger, control, purchase, trackage rights), the significant terms and conditions, and the consideration to be paid (monetary or otherwise).

CSXT and the State have entered into the Lease Agreement for CSXT to lease the Line for an additional 50 years. CSXT will continue to operate the Line that it and its predecessors have operated since 1890. CSXT will retain the responsibility for dispatching, track maintenance, capital improvements, and serving shippers under the Lease Agreement.

CSXT is paying Georgia a monthly rental of \$1,008,333.33. Rental will increase annually by 2.5% compounded. Sections 3.01 and 3.02. In addition, by July 31 of each year, CSXT shall pay Georgia additional rent consisting of 50% of the revenue generated from all agreements, subleases, easements, or licenses attributable to the Line for the previous year. Section 3.03.

(ii) Agreement (exhibit 2). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the Lease. In addition, parties to exempt trackage rights agreements and agreements described at §1180.2(d)(7) must submit one copy of the executed agreement or renewal agreement with the notice of exemption, or within 10 days of the date that the agreement is executed, whichever is later.

A copy of the Lease Agreement is in Exhibit 2 on the diskette.

(iii) If a consolidation or merger is proposed, indicate: (A) The name of the company

¹⁵ CSXT filed a Notice of Exemption to abandon the Silver Comet Line on October 15, 2018. Docket No. AB-55 (Sub-No. 784X), *CSX Transportation, Inc.-Abandonment Exemption-in Cobb County, GA*.

resulting from the consolidation or merger; (B) the State or territory under the laws of which the consolidated company is to be formed or the merged company is to file its certificate of amendment; (C) the capitalization proposed for the resulting company; and (D) the amount and character of capital stock and other securities to be issued.

Not applicable.

(iv) Court order (exhibit 3). If a trustee, receiver, assignee, or personal representative of the real party in interest is an applicant, submit a certified copy of the order, if any, of the court having jurisdiction, authorizing the contemplated action.

Not applicable.

(v) State whether the property involved in the Lease includes all the property of the applicant carriers and, if not, describe what property is included in the Lease.

The Lease involves all of the property of the W&A. It does not involve all of the property of CSXT.

(vi) Briefly describe the principal routes and termini of the lines involved, the principal points of interchange on the routes, and the amount of main-line mileage and branch line mileage involved.

The Line runs 137.33 miles between Atlanta, GA and Chattanooga, TN. CSXT intersects with NSR in Chattanooga, TN, and Dalton, GA. CSXT interchanges traffic in Elizabeth, GA with the GNRR. The 2.4-mile Tyner Branch connects to the Line at milepost 0TY 126.1.

(vii) State whether any governmental financial assistance is involved in the Lease and, if so, the form, amount, source, and application of such financial assistance.

No governmental financial assistance is involved in the Lease.

(8) Environmental data (exhibit 4). Submit information and data with respect to environmental matters prepared in accordance with 49 CFR part 1105. In major and significant transaction, applicants shall, as soon as possible, and no later than the filing of a notice of intent, consult with the Board's Section of Environmental Analysis for the proper format of the environmental report.

The Lease extends CSXT's operations over the Line for an additional 50 years. CSXT and its predecessors have operated the Line since 1890.

The Lease does not require environmental information under 49 CFR §1105.6(c) and an

historic report is not required under 49 CFR §1105.8(b), because the Lease will not meet the thresholds for environmental or historic review.

Once the Lease takes effect, CSXT will continue to operate the Line as it does today. The Lease will not result in CSXT's operations over the Line exceeding the thresholds in 49 C.F.R. §1105.7(e)(4 and 5).

Since there will be no change in operation or traffic volume related to the Lease, the Lease will not affect energy consumption as it: (1) will not affect the transportation of energy resources (49 C.F.R. §1105.7(e)(4)(i)); (2) will not have an effect on recyclable commodities (49 C.F.R. §1105.7(e)(4)(ii)); (3) will not increase or decrease overall energy efficiency (49 C.F.R. §1105.7(e)(4)(iii)); and (4) will not divert a total of 1,000 carloads per year or 50 carloads per mile per year from the Line (49 C.F.R. §1105.7(e)(4)(iv)).

For the same reason, the Lease will not affect air quality as it will not result in an increase: (1) in rail traffic of at least 100 percent or at least eight trains a day on any segment of the Line; (2) in rail yard activity of at least 100 percent; or (3) on average in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment. (49 C.F.R. §1105.7(e)(5)(i)(A-C)). Where the Line passes through a class I or nonattainment area under the Clean Air Act, the Lease will not affect air quality since it will not result in an increase: (1) in rail traffic of at least 50 percent or an increase of at least three trains a day on any segment of rail line; (2) an increase in rail yard activity of at least 20 percent; or (3) on average in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment (49 C.F.R. §1105.7(e)(5)(ii)(A-C)).

For these reasons, the Lease is not subject to the environmental reporting requirements under the exceptions provided at 49 C.F.R. §1105.6(c).

Similarly, the Lease does not require an historic report under 49 C.F.R. §1105.8(b). The exception to filing as Historic Report applies because the Lease is “for the purpose of continued rail operations where further STB approval is required to abandon any service and there are no plans to dispose of or alter properties subject to STB jurisdiction that are 50 years old or older.” 49 C.F.R. §1105.8(b)(1). CSXT will continue to operate the Line that it has operated for over 120 years.

1180.8. Operational Data

(c) For minor transactions: Operating plan-minor (exhibit 15). Discuss any significant changes in patterns or types of service as reflected by the operating plan expected to be used after consummation of the transaction. Where relevant, submit information related to the following:

CSXT and its predecessors have continuously operated the Line since 1890. CSXT does not intend to make any significant changes in patterns or types of service provided over the Line. CSXT and the State are entering the Lease to replace the lease that expires on December 31, 2019, with the Lease taking effect on January 1, 2020.

(1) Traffic level density on lines proposed for joint operations.

There are no lines involved in the proposed transaction that will be used in joint operations as a result of the proposed transaction.

(2) Impacts on commuter or other passenger service operated over a line which is to be downgraded, eliminated, or operated on a consolidated basis.

There are no passenger or commuter operations on the Line today. Therefore, no adverse impacts on commuter or other passenger service are anticipated and no lines will be downgraded, eliminated, or operated on a consolidated basis.

However, the Lease Agreement does provide for future passenger train operations by Georgia or its designee, subject to agreement between CSXT and Georgia.

(3) Operating economies, which include, but are not limited to, estimated savings.

CSXT does not expect any change in operating economies because operations will remain the same.

(4) Any anticipated discontinuances or abandonments.

CSXT does not anticipate discontinuing service over or abandoning the Line or any portion of the Line. CSXT must receive prior written approval from Georgia not less than 180 days before commencing pre-filing submissions for abandonment.

CSXT has agreed seek authority to abandon two of CSXT's lines that are not part of the Line in order to expand Georgia's Silver Comet Recreational trail. Section 11.03 of the Lease Agreement.

CSXT filed a Notice of Exemption on October 15, 2018 to abandon the 2.32-mile long railroad line between milepost S.G. 581.61 and milepost S.G. 579.29 in Cobb County, GA. No local or overhead traffic has moved over the line for at least two years. The abandonment was filed in AB-55 (Sub-No. 784X), *CSX Transportation, Inc.-Abandonment Exemption-in Cobb County, GA*. If the abandonment is granted, CSXT intends to enter a trail use agreement with Georgia.

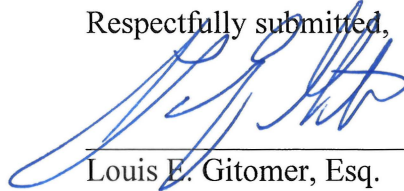
In the Lease Agreement, CSXT has granted Georgia or the Georgia Department of Transportation a first right of refusal to acquire another line for trail use. That 4.3-mile line runs between milepost S.G. 579.29 and milepost 575.00 in Cobb County, GA. The line must be acquired within three years of CSXT obtaining abandonment authority.

CONCLUSION

CSXT respectfully requests that the Board accept the Application, determine that this is an application for a minor transaction, and grant this Application subject to the conditions for the protection of employees in *Mendocino Coast Ry., Inc.-Lease and Operate*, 354 I.C.C. 732 (1978)

and 360 I.C.C. 653 (1980), as clarified in *Wilmington Term. RR, Inc.-Pur. And Lease-CSX Transp., Inc.*, 6 I.C.C.2d 799, 814-826 (1990) for the benefit of CSXT and W&A employees.

Respectfully submitted,



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CSX Transportation, Inc.
500 Water Street J-150
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Lou@lgraillaw.com
Attorneys for: CSX Transportation, Inc.

Dated: October 22, 2018

VERIFICATION

I, Peter J. Shudtz, declare under penalty of perjury that the foregoing is true and correct.

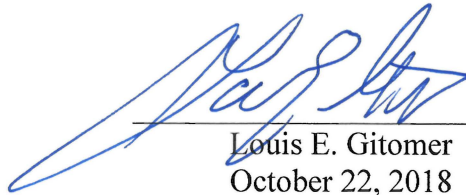
Further, I certify that I am qualified and authorized to file this Verified Statement.



Vice President Federal Regulation and General
Counsel, Federal Affairs
Executed October 18, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Application in Docket No. FD 36220, *CSX Transportation, Inc.—Lease—Western and Atlantic Railroad*, to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and the Governors, Public Service Commission, and Departments of Transportation of the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia, and the District of Columbia.



Louis E. Gitomer
October 22, 2018

INDEX TO APPENDIXES AND EXHIBITS

Appendixes

- Appendix 1 Impacts of the Lease upon carrier employees.
- Appendix 2 Opinion of Counsel for CSX Transportation, Inc.

Exhibits

- Exhibit 1 Maps. Color Exhibit at end of Volume 1.
 Exhibit 1A – Line
 Exhibit 1B – CSXT System Map
 Exhibit 1C – 2.32-mile abandonment line
 Exhibit 1D – 4.3-mile abandonment line
- Exhibit 2 Agreement between CSXT and the State of Georgia. See Diskette.
- Exhibit 4 Environmental and Historic Information. Excepted.
- Exhibit 15 Minor Transaction Operating Plan.

**APPENDIX 1-Impacts of the Lease upon carrier employees.
CSX Transportation, Inc. and the Western and Atlantic Railroad**

Employees Affected by the Lease

CSXT does not propose to change operations on the Line. Therefore, no CSXT employees will be adversely affected by the Lease.

W&A does not operate over the Line, and has not operated the Line since 1890. Therefore, no W&A employees will be adversely affected by the Lease.

Appendix 2-Opinion of Counsel for CSX Transportation, Inc.



Peter J. Shudtz
VP Federal Regulation
and General Council
CSX Transportation

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Peter_Schudtz@csx.com

October 22, 2018

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

Re: **Docket No. FD 36220, CSX Transportation, Inc. –Lease Renewal—Western and Atlantic Railroad**

Dear Ms. Brown:

As counsel for CSX Transportation, Inc. ("CSXT"), I am familiar with the Application of CSXT to lease approximately 137.33 miles of the Western and Atlantic Railroad between Central Avenue in the City of Atlanta, GA, and Union Station in the City of Chattanooga, TN and am of the opinion that the transaction described in said Application meets the requirements of law and will be legally authorized and valid, if approved by the Board.

Very truly yours,

Peter J. Shudtz
Vice President Federal Regulation
and General Counsel, Federal Affairs

EXHIBIT 1-MAPS
See Color Exhibits at end of Volume 1

EXHIBIT 2- AGREEMENT BETWEEN CSXT AND THE STATE OF GEORGIA

See the Diskette

EXHIBIT 4-ENVIRONMENTAL DOCUMENTS

Excepted

EXHIBIT 15-MINOR TRANSACTION OPERATING PLAN

CSXT does not intend to change current operations over the Line as a result of the Lease. Therefore, CSXT has not developed an operating plan for the Line that is different from the present operations.

CSXT generally operates 15 trains over the line on a daily basis. These are overhead and local trains traveling in both directions between Atlanta and Chattanooga. CSXT operates six merchandise trains, two auto trains, two intermodal trains, and five unit trains per day on the Line.

CSXT uses six yards along the Line at Elizabeth, Kennesaw, Cartersville, and Dalton, GA and Wauhatchie and Craven in Chattanooga, TN.

CSXT will continue to use existing routes and rights to ensure that trains are handled in the most cost effective and efficient manner.

EXHIBIT 1 – MAPS

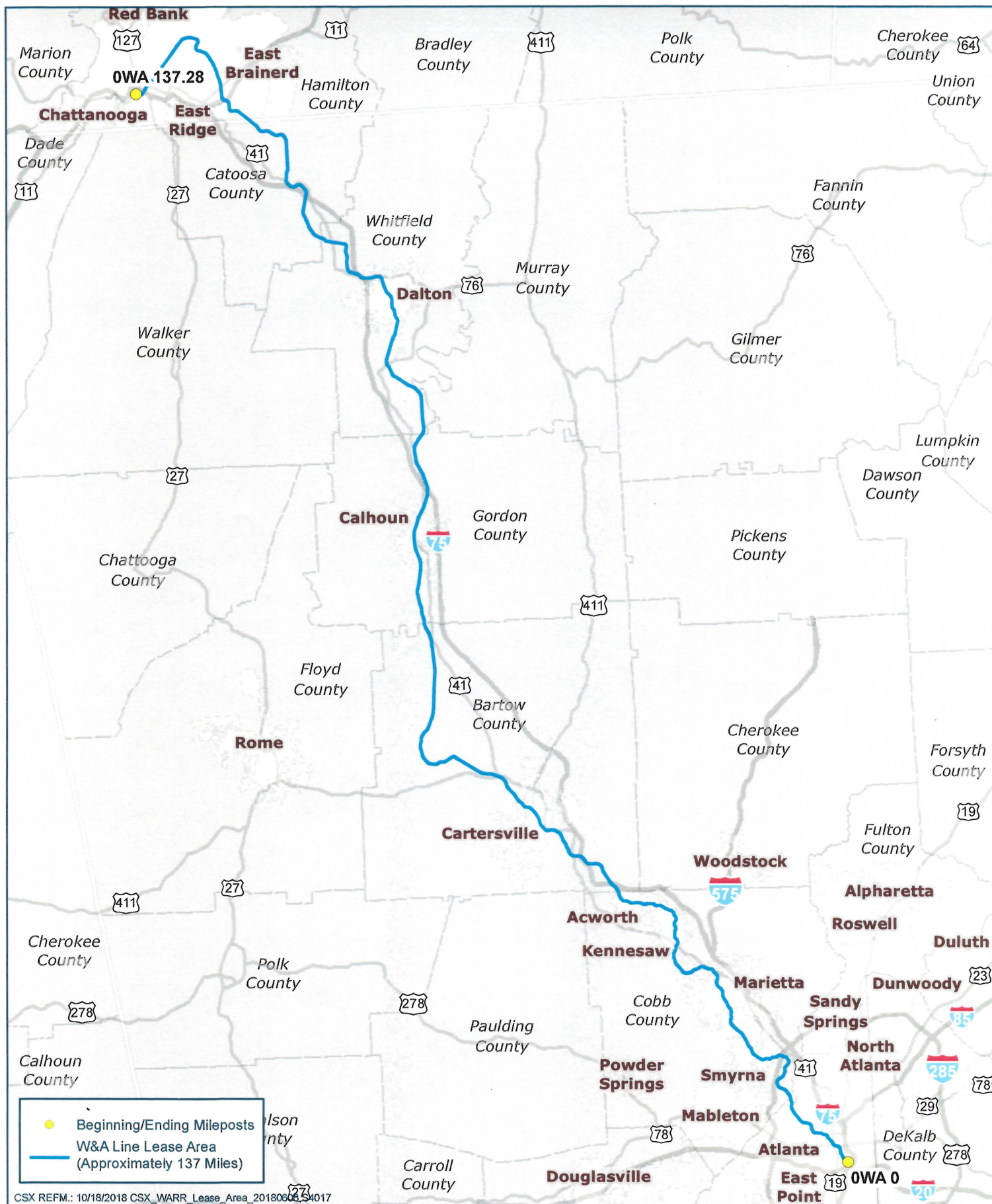
Exhibit 1A – Line

Exhibit 1B – CSXT System Map

Exhibit 1C – 2.32-mile abandonment line

Exhibit 1D – 4.3-mile abandonment line

EXHIBIT 1A – LINE



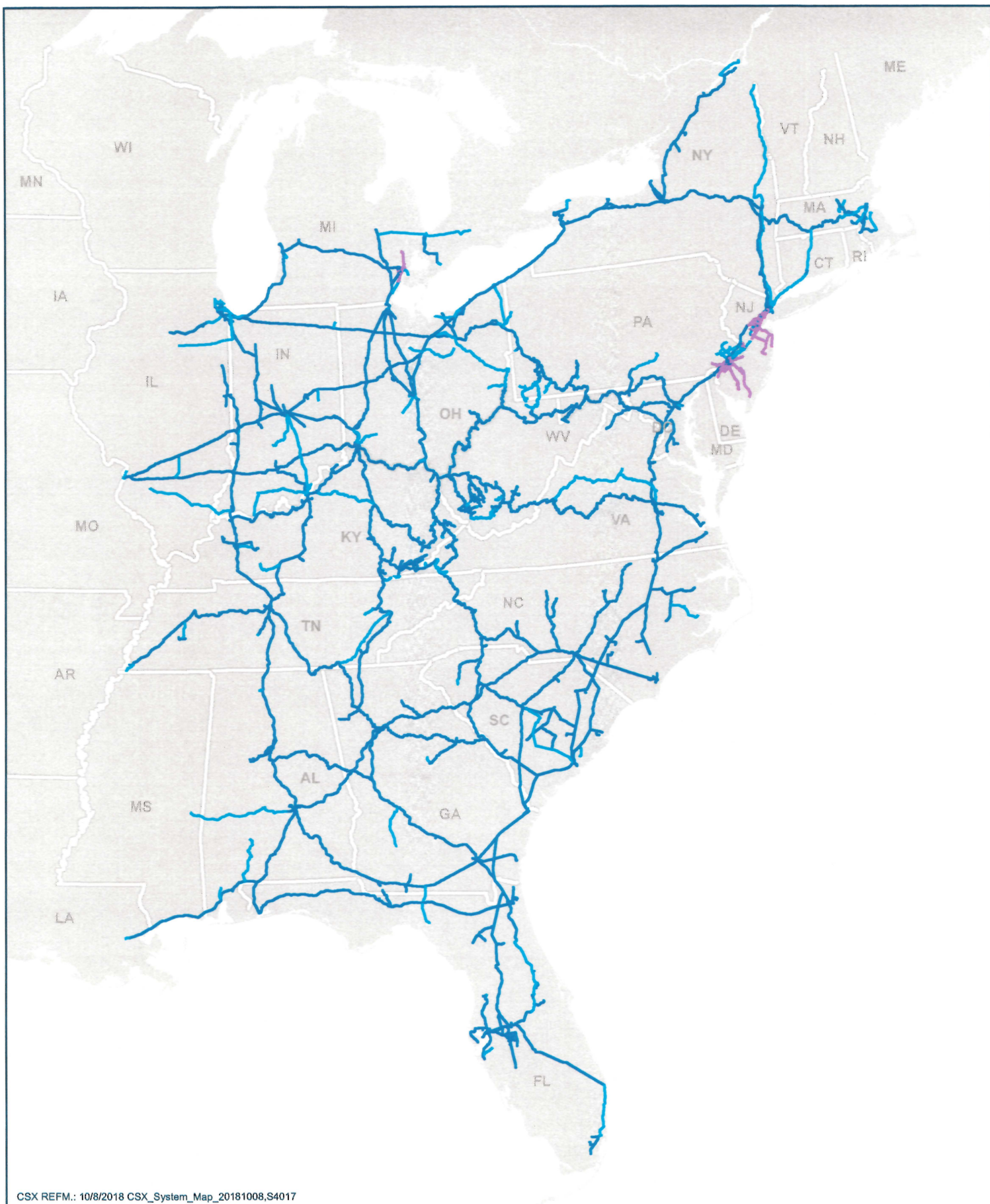
CSX W&A Lease Area

Milepost OWA 0 (Beginning) to OWA 137.28 (Ending)
July 2018

0 10 20 Miles



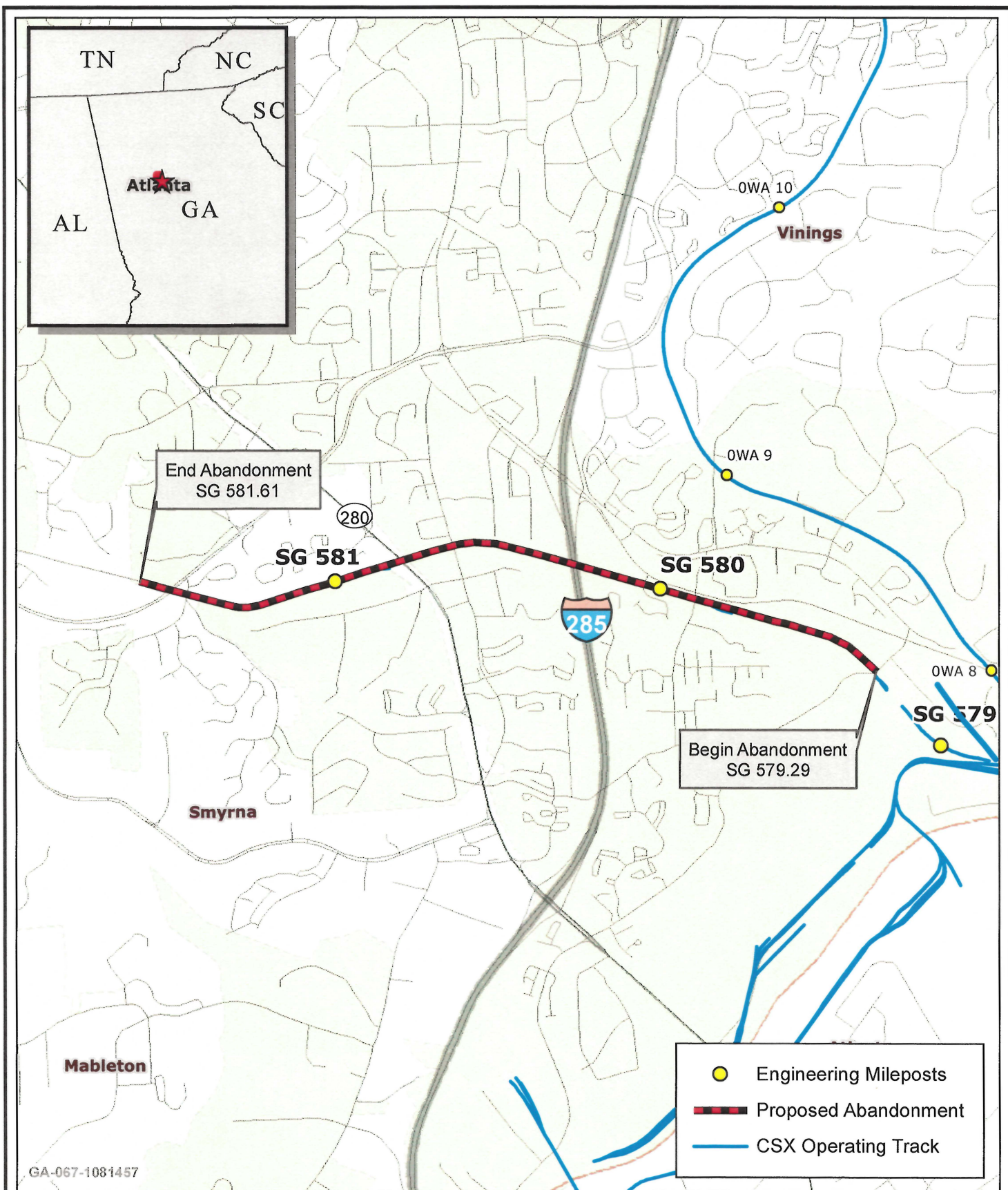
EXHIBIT 1B – CSXT SYSTEM MAP



CSX REF.M.: 10/8/2018 CSX_System_Map_20181008,S4017



EXHIBIT 1C – 2.32-MILE ABANDONMENT LINE

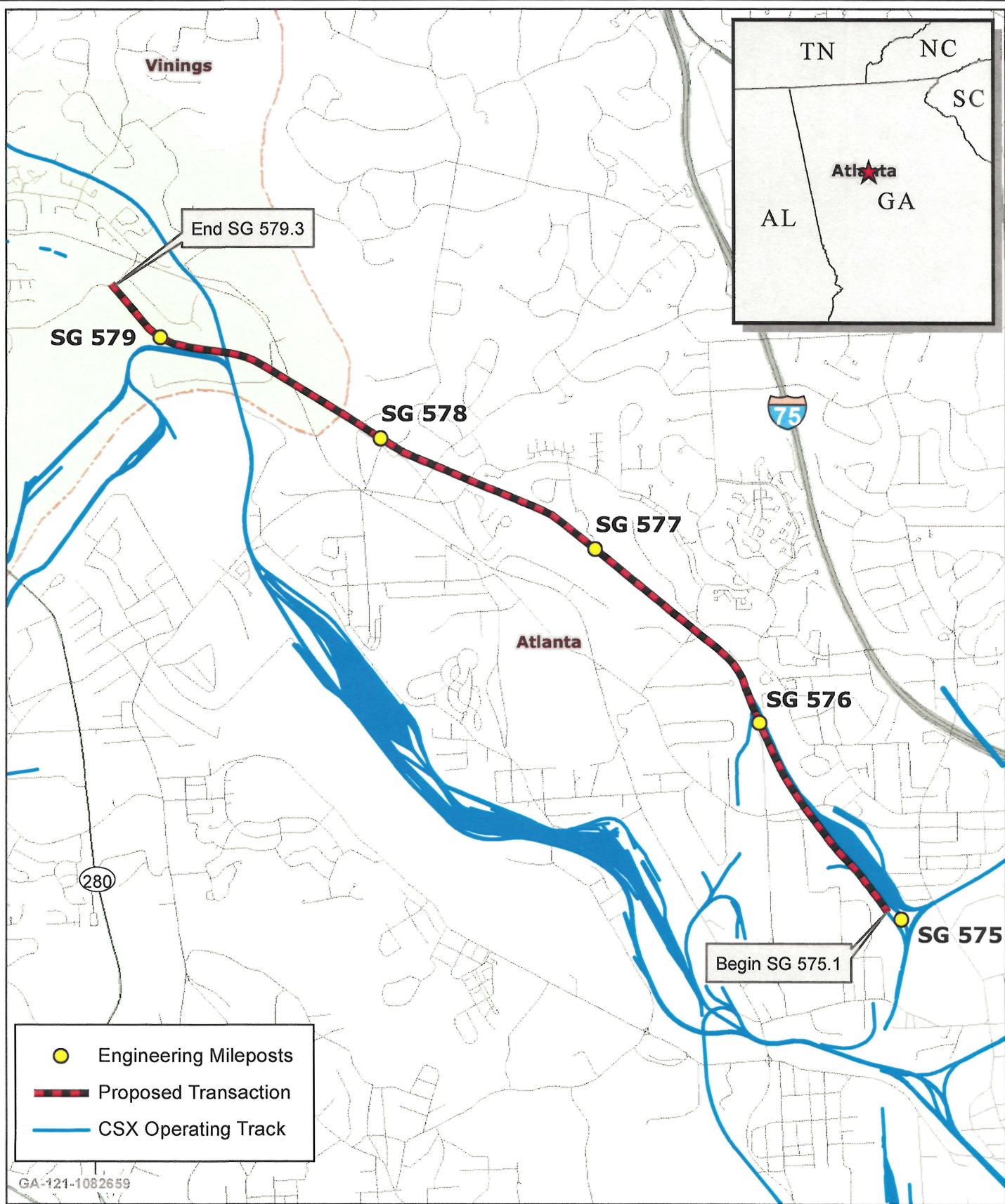


CSX Transportation, Inc.
Proposed Abandonment
Silver Comet Trail Extension I
 Milepost SG 579.29 - SG 581.61 (2.32 Miles)
 Cobb County - Atlanta, GA
 Atlanta Division - Atlanta Terminal Subdivision
 STB Docket No. AB 55 (Sub-No. 784X)

0 1,000 2,000
 Feet



EXHIBIT 1D – 4.3-MILE ABANDONMENT LINE



CSX Transportation, Inc.
Silver Comet Trail Extension II
Milepost SG 579.3 - SG 575.1 (4.3 Miles)
Cobb & Fulton County - Atlanta, GA
Atlanta Division - Atlanta Terminal Subdivision

0 1,000 2,000
Feet

