

LAW OFFICES OF
LOUIS E. GITOMER, LLC

LOUIS E. GITOMER
Lou@lgraillaw.com

MELANIE B. YASBIN
Melanie@lgraillaw.com
410-296-2205

600 BALTIMORE AVENUE, SUITE 301
245057 TOWSON, MARYLAND 21204-4022
(410) 296-2250 • (202) 466-6532
FAX (410) 332-0885

ENTERED
Office of Proceedings
January 24, 2018
Part of
Public Record

January 24, 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

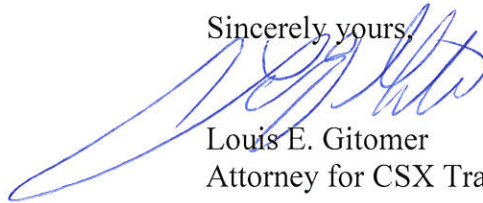
Re: **Docket No. AB-55 (Sub-No. 775X), CSX Transportation, Inc.—
Abandonment—in Clark, Floyd, Lawrence, Orange, and Washington Counties,
IN**

Dear Ms. Brown,

Enclosed for efilng is CSX Transportation, Inc.'s Motion to Reject the Notice of Intent
filed by Paul Didelius and investors

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

Sincerely yours,



Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (SUB-NO. 775X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION— IN CLARK, FLOYD,
LAWRENCE, ORANGE, & WASHINGTON COUNTIES, IND.

CSX TRANSPORTATION, INC. MOTION TO REJECT

Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer, Esq.
Melanie B. Yasbin, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

Attorneys for: CSX TRANSPORTATION,
INC.

Dated: January 24, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (SUB-NO. 775X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION— IN CLARK, FLOYD,
LAWRENCE, ORANGE, & WASHINGTON COUNTIES, IND.

CSX TRANSPORTATION, INC. MOTION TO REJECT

CSX Transportation, Inc. (“CSXT”), pursuant to 49 C.F.R. § 1152.27 respectfully moves the Surface Transportation Board to reject the Notice Expressing Intent to File an Offer Of Financial Assistance (the “NOI”) filed on behalf of Paul Didelius and investors (the “Didelius”) on January 16, 2018, as amended and supplemented twice on January 18, 2018, for failing to comply with the requirements of 49 C.F.R. § 1152.27(c)(2). The original NOI was only for a 10.3-mile line segment between mileposts OOQ251.7 and OOQ262.0 at the north end of the 62.3-mile proposed abandonment. The amended NOI was for a 10-mile line, but between mileposts OOQ251.7 and OOQ284.0. The third filing was for a 32.3-mile line between mileposts OOQ251.7 and OOQ284.0.¹ Didelius also requested that CSXT provide financial information.

CSXT filed a Notice of Exemption on December 19, 2017 to abandon an approximately 62.3-mile rail line on its Northern Region, Louisville Division, Hoosier Subdivision between near Bedford, milepost 00Q251.7, and near New Albany, milepost 00Q314.0, all in Clark, Floyd Lawrence, Orange, and Washington Counties, IN (the “Line”). The Board served a Notice of

¹ Didelius has misstated the mileposts. The mileposts begin “zero zero” and not “oh oh” as stated in all three of the Didelius pleadings.

Exemption. *CSX Transportation, Inc.—Abandonment Exemption—in Clark, Floyd, Lawrence, Orange, & Washington Counties, Ind.*, Docket No. AB 55 (Sub-No. 775X) (served January 8, 2018). Previously, CSXT had filed a Petition for Exemption on December 18, 2009 seeking an exemption to discontinue service over the Line. After holding a public meeting and concluding that there was a “lack of any current traffic on the line,” the Board granted the exemption. *CSX Transportation, Inc.—Discontinuance of Service Exemption—in Clark, Floyd, Lawrence, Orange, and Washington Counties, IN*, STB Docket No. AB-55 (Sub-No. 698X) (served April 7, 2010) at 4. There has been no traffic on the Line for at least seven years.

CSXT has agreed to negotiate trail use for the Line with both Indiana Trails Use Fund, Inc., and the City of New Albany, Indiana, which would preserve the entire Line for future reactivation as a railroad line.

Didelius has failed to comply with the Board’s rules for filing a NOI, specifically the preliminary financial responsibility requirement that must be met for the NOI to be accepted and for CSXT to provide financial information.

In 2015, the Board opened a proceeding to review the requirements for filing an offer of financial assistance (the “OFA”) in abandonment and discontinuance proceedings. In the Notice of Proposed Rulemaking, the Board stated

The Board is convinced that it makes sense to require offerors to demonstrate some degree of financial responsibility before requiring the railroads to turn over their financial information to offerors. However, the Board also recognizes that a potential offeror cannot be expected to make a full financial responsibility showing based on the value of a rail line without financial information from the carrier. Accordingly, as discussed in more detail in Section II, the Board proposes requiring potential offerors to make a minimal, preliminary financial responsibility showing, but one that does not require any information from the carrier beyond that provided in the notice, petition, or application for abandonment or discontinuance.

Offers of Financial Assistance, Docket No. EP 729 (served September 30, 2016), slip op. at 5.

The Board amended its rules governing OFA in *Offers of Financial Assistance*, Docket No. EP 729 (served June 29, 2017) (the “*OFA Decision*”), where it adopted a requirement that “a potential offeror be required to make a preliminary financial responsibility showing as part of the NOI.” *Id.* at 6 and 49 CFR 1152.27(c)(1)(ii). Not only was the offeror required to calculate the cost of the steel on the line, but also the projected costs of annual maintenance. *Id.* Once the calculation is made, the Board requires a potential offeror to demonstrate that preliminary financial responsibility. 49 CFR 1152.27(c)(1)(ii) (Persons submitting an expression of intent to file an offer of financial assistance ... **must demonstrate** that they are financially responsible) (emphasis added).

Didelius did not make the calculation and did not demonstrate that it is preliminarily financially responsible.

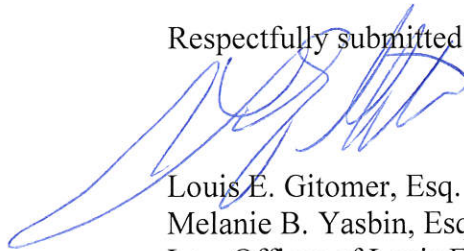
Nor did Didelius identify the acquiring party. “... the purpose of requiring NOIs in all cases is to make the OFA process more efficient by providing carriers with earlier notice that parties may be interested in purchasing or subsidizing service over rail lines that may otherwise be abandoned or discontinued and **providing identifying information about those parties.**” (emphasis added). OFA Decision at 5.

Although not a requirement for the NOI, after more than seven years of there being no rail service on the Line, the Didelius failed to demonstrate that there is a continued need for rail service on the Line. 49 CFR 1152.27(c)(1)(iv)(E) and (2)(i).

The Board can reject a filing when it fails to comport with the Board’s filing rules. *See Nevada Central Railroad—Exemption for Acquisition and Operation of Rail Service—in Elko and White Pine Counties, NV*, STB Docket No. FD-34773 (STB served Nov. 22, 2005). Based on the Didelius’ failure to comply with the specific rules requiring a demonstration of

preliminary financial responsibility, CSXT respectfully requests that the Board reject the fatally defective NOI with prejudice and not require CSXT to turn over valuation information to Didelius.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'L. Gitomer', is written over the 'Respectfully submitted,' text.

Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-1229

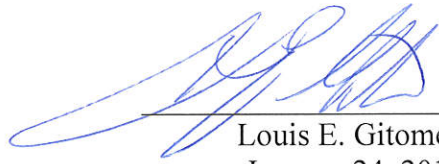
Louis E. Gitomer, Esq.
Melanie B. Yasbin, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

Attorneys for: CSX TRANSPORTATION,
INC.

Dated: January 24, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Motion to Reject to be served upon all parties of record by electronic service.



Louis E. Gitomer
January 24, 2018