

308443

July 3, 2024

ENTERED
Office of Proceedings
July 3, 2024
Part of
Public Record

Submitted Via E-Filing

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

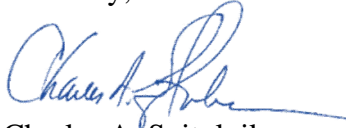
Re: *GMéxico Transportes, S.A.B. de C.V. – Acquisition of Control Exemption – CG
Railway, LLC, STB FD No. 36780*

Dear Ms. Brown:

I am attaching for e-filing the Supplemental Exhibit of GMéxico Transportes, S.A.B. de C.V. in the above-referenced proceeding.

Please do not hesitate to contact me if you have any questions or require additional information.

Sincerely,


Charles A. Spitulnik

Attachment

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 36780

**GMÉXICO TRANSPORTES, S.A.B. DE C.V. – ACQUISITION OF CONTROL
EXEMPTION – CG RAILWAY, LLC.**

SUBMISSION OF SUPPLEMENTAL EXHIBIT

Communications with respect to this pleading should
be addressed to:

Charles A. Spitulnik
Ayelet Hirschorn
Grant M. Glovin
Kaplan Kirsch LLP
1634 I (Eye) Street, Suite 300
Washington, DC 20006
(202) 955-5600
cspitulnik@kaplankirsch.com
ahirschorn@kaplankirsch.com
gglovin@kaplankirsch.com

Counsel for GMéxico, S.A.B. de C.V.

Dated: July 3, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 36780

**GMÉXICO TRANSPORTES, S.A.B. DE C.V. – ACQUISITION OF CONTROL
EXEMPTION – CG RAILWAY, LLC.**

SUBMISSION OF SUPPLEMENTAL EXHIBIT

GMéxico Transportes, S.A.B. de C.V. (“GMXT”), a railroad holding company, hereby submits a recently executed amendment to the Purchase and Sale Agreement between GMXT’s subsidiary and Rail Ferry Investment Holdings Inc., a subsidiary of Seacor Holdings, Inc. (“Seacor”).

On January 8, 2024, GMXT filed a Petition for Exemption (the “January 8 Petition”) seeking an exemption from the formal requirements of 49 U.S.C. §§ 11323-11324, for GMXT to acquire an indirect controlling ownership interest in CG Railway, LLC (“CGR”), a Class III railroad (the “Transaction”). CGR is wholly owned by Golfo de México Rail Ferry Holdings LLC, a 50/50 joint venture (“JV”) between Seacor (through Rail Ferry Investment Holdings Inc.) and Genesee & Wyoming, Inc. (through its wholly-owned subsidiary, G&W Agave Holdings Inc.) (“G&W”). GMXT sought to acquire control of CGR through GMXT Marine LLC (formerly known as GMXT US 2, LLC), an indirect wholly-owned subsidiary of GMXT. The Board denied the January 8 Petition and directed the various parties to submit other documentation to the Board related to other matters involving the parties. *GMéxico Transportes, S.A.B. de C.V.—Acquisition of Control Exemption—CG Ry.*, FD 36701 (STB served Apr. 4, 2024) (the “April 4 Decision”).

Each party subsequently submitted the filings and information the Board had directed it to make. Thereafter, on May 15, 2024, GMXT again filed a Petition for Exemption in this proceeding (the “Petition”). GMXT included as Exhibit B to that Petition two Purchase and Sale Agreements. One was between GMXT’s subsidiary and Seacor’s subsidiary, while the other was between GMXT’s subsidiary and G&W’s subsidiary.

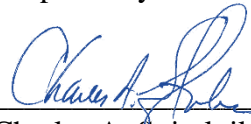
On June 27, 2024, GMXT’s subsidiary and Seacor’s subsidiary executed an amendment to the Purchase and Sale Agreement entered into by such parties (the “Amendment”). The Amendment is attached as **Exhibit A**. The Amendment was executed to further postpone the “Outside Date” (as defined in the Purchase and Sale Agreement between GMXT’s subsidiary and Seacor’s subsidiary) to August 27, 2024, and the beginning of the “Contingent Consideration Period” (as defined in the Purchase and Sale Agreement between GMXT’s subsidiary and Seacor’s subsidiary) to September 30, 2024. The date of the Outside Date was chosen to align with the Purchase and Sale Agreement between GMXT’s and G&W’s subsidiaries, which includes a similar date. GMXT confirms that the Petition was complete and accurate as filed; the Amendment postdates the May 15 filing of the Petition by more than six weeks. The Amendment is being filed solely for completeness, and has no substantive impact on the Transaction other than the parties’ rights before the Transaction’s consummation. GMXT submits that the Amendment should in no way affect the Board’s review of the Petition.

In the Petition, GMXT requested expedited consideration; GMXT now renews that request. The Amendment affects no substantive provision of the agreement and should not delay or in any way affect the Board’s review. GMXT submits that the Board has now had sufficient time in these two proceedings to review the merits and the substantive issues of the Transaction. GMXT notes that the second Petition for Exemption was submitted on May 15, 2024, and the Board must

accordingly decide whether or not to begin a proceeding by August 13, 2024. *See* 49 U.S.C. § 10502(b). GMXT requests that the Board expedite its consideration to allow the parties to complete all necessary actions required to accomplish the postponed closing without any further delay. GMXT further requests that the Board include in its decision an order making the exemption effective by no later than August 27, 2024, if the exemption would not be effective by that date without such an order.

Dated: July 3, 2024

Respectfully submitted,



Charles A. Spitulnik
Ayelet Hirschhorn
Grant M. Glovin
Kaplan Kirsch LLP
1634 I (Eye) Street NW
Suite 300
Washington, DC 20006
(202) 955-5600
cspitulnik@kaplankirsch.com
ahirschhorn@kaplankirsch.com
gglovin@kaplankirsch.com

CERTIFICATE OF SERVICE

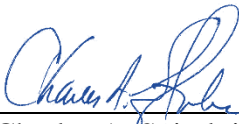
I hereby certify that on the 3rd day of July 2024, I caused the foregoing Supplemental Exhibit for GMéxico Transportes, S.A.B. de C.V. to be served on the following parties by email:

William C. Long
SEACOR Ocean Transport
c/o SEACOR Ocean Transport Inc.
2200 Eller Drive
Fort Lauderdale, FL 33316
blong@ckor.com

Scott Golenbock
Milbank LLP
55 Hudson Yards, New York, NY 10001
sgolenbock@milbank.com

Allison Fergus, General Counsel
Genesee & Wyoming Inc.
20 West Avenue, Darien, CT 0682
afergus@gwrr.com

Anthony F. Vernace
Simpson Thacher & Bartlett LLP
425 Lexington Avenue, New York, NY 10017
avernance@stblaw.com



Charles A. Spitulnik

Dated: July 3, 2024

EXHIBIT A

**AMENDMENT TO PURCHASE AND SALE AGREEMENT BETWEEN SEACOR AND
GMXT**

AMENDMENT TO PURCHASE AND SALE AGREEMENT

This AMENDMENT TO PURCHASE AND SALE AGREEMENT (this “Amendment”) is entered into as of June 27, 2024, by and among GMXT Marine LLC (f/k/a GMXT US 2, LLC), a limited liability company duly formed under the laws of the State of Delaware (“Buyer”); Rail Ferry Investment Holdings Inc., a corporation duly organized under the laws of the State of Delaware (“Seller”); and LCI Shipholdings Inc., a corporation duly organized under the laws of the Marshall Islands (the “MI Holder”). Buyer, Seller and MI Holder are each referred to herein individually as a “Party” and collectively as the “Parties.”

Capitalized terms used but not defined in this Amendment have the meanings given to them in the Agreement (as defined below).

WHEREAS, the Buyer, Seller and MI Holder entered into that certain Purchase and Sale Agreement, dated as of December 29, 2023 (the “Agreement”); and

WHEREAS, pursuant to Section 8.1(d) of the Agreement, the Outside Date was March 29, 2024;

WHEREAS, in accordance with Section 8.1(d) of the Agreement, and pursuant to that certain notice sent via email from Buyer to Seller on April 2, 2024, the Outside Date was extended to June 27, 2024; and

WHEREAS, pursuant to Section 5.1(c) of the Agreement, the receipt of confirmation that the STB has granted authorization for the consummation of the transaction contemplated by the Agreement is a condition precedent to the Closing;

WHEREAS, the Parties have filed a petition before the STB seeking an exemption from STB that would allow the Parties to consummate the transaction (the “Expected STB Decision”);

WHEREAS, in accordance with the original Outside Date of March 29, 2024, the Contingent Consideration Period pursuant to Section 2.5(b)(iv) of the Agreement was expected to commence on March 31, 2024;

WHEREAS, pursuant to Section 9.10 of the Agreement, the Agreement may be amended only by a written mutual agreement executed and delivered by Buyer and Seller; and

WHEREAS, in consideration of the Expected STB Decision, the Parties desire to amend the Agreement to further extend the Outside Date and Contingent Consideration Period as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Section 2.5(b)(iv) of the Agreement is hereby amended to read as follows (with deletions shown in ~~red strikethrough~~ and additions shown in **bold double underline**):

“Contingent Consideration Period” means each of four consecutive twelve (12) month periods, with the first such period commencing on ~~March 31~~ September 30, 2024.

2. Section 8.1(d) of the Agreement is hereby amended to read as follows (with deletions shown in ~~red strikethrough~~ and additions shown in **bold double underline**):

By either Party, by giving written notice of such termination to the other, on or after ~~March 22~~ August 27, 2024 (the “**Outside Date**”) if the Closing shall not have occurred on or prior to the Outside Date; ~~provided that the Outside Date may be extended for an additional ninety (90) days by either Buyer or Seller by giving written notice, if the Closing shall not have occurred on or prior to the Outside Date and at the Outside Date all of the conditions set forth in ARTICLE V are satisfied or validly waived (other than those that by their nature are to be satisfied at the Closing, provided that such conditions are capable of being satisfied at the Closing if the Closing were to occur on the date of such initial Outside Date), except for the conditions set forth in Section 5.1(a) (to the extent related to CFIUS Approval or the U.S. Surface Transportation Board’s authorization for the consummation of the transactions contemplated hereby), Section 5.1(b) or Section 5.1(c);~~ **provided, further,** that the right of (i) Seller to terminate this Agreement under this Section 8.1(d) shall not be available if any Seller Party is in material breach of its covenants in this Agreement so as to cause any of the conditions to the Closing set forth in Section 5.1 and Section 5.2 to be unsatisfied (including the obligation to effect the Closing pursuant to Section 2.3 (without giving effect to the two (2) Business Day period therein)) and (ii) Buyer to terminate this Agreement under this Section 8.1(d) shall not be available if Buyer is in material breach of its covenants in this Agreement so as to cause any of the conditions to the Closing set forth in Section 5.1 or Section 5.3 to be unsatisfied (including the obligation to effect the Closing pursuant to Section 2.3 (without giving effect to the two (2) Business Day period therein)); or

3. This Amendment constitutes the entire agreement of Parties with respect to the matters covered herein and supersedes all prior agreements and understandings, written or oral, among the Parties with respect to such matters. Except to the extent expressly amended by this Amendment, the Agreement is not otherwise amended, modified or supplemented and shall remain in full force and effect in accordance with its terms.
4. Section 9.4 (*Consent to Jurisdiction; Service of Process; Waiver of Jury Trial*), Section 9.10 (*Amendment and Waivers*), Section 9.14 (*Severability*) and Section 9.15 (*Counterparts*) of the Agreement are incorporated herein by reference and shall apply to this Amendment *mutatis mutandis*.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed and delivered as of the date first above written.

GMXT MARINE LLC

By:


Name: Francisco Jurado Martínez
Title: Authorized Signatory

RAIL FERRY INVESTMENT HOLDINGS INC.

By:

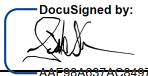
Name:
Title:

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed and delivered as of the date first above written.

GMXT MARINE LLC

By: _____
Name: Francisco Jurado Martínez
Title: Authorized Signatory

RAIL FERRY INVESTMENT HOLDINGS INC.

By:  _____
Name: Scott Weber
Title: Authorized Signatory