

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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FD 35247

**GRENADA RAILWAY, LLC
—ACQUISITION AND OPERATION EXEMPTION—
ILLINOIS CENTRAL RAILROAD COMPANY
AND WATERLOO RAILWAY COMPANY**

**PETITION TO REVOKE
NOTICE OF EXEMPTION**

REPLY COMMENTS OF IOWA PACIFIC HOLDINGS, LLC

Submitted By:

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Due: August 1, 2013

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INTRODUCTION

On September 11, 2012, Robert J. Riley, an employee of the Illinois Central Railroad (“IC”), filed a petition to revoke the verified Notice of Exemption (“NOE”) originally submitted in 2009 by Grenada Railway, LLC (“Grenada”), for the acquisition and operation of a 175.4 mile long line of railroad (“the Line”) that is the subject of this proceeding. Iowa Pacific Holdings, LLC (“IPH”), a short line railroad holding company, files these comments and verified statement in support of Mr. Riley’s petition urging that the Board revoke Grenada’s exemption for abuse of the agency’s acquisition procedures and urging that the Line be reconveyed back to its owner, the IC.

BACKGROUND

The subject Line has had a long and storied history. Up until 1995, it formed a part of the Chicago-New Orleans route of the *City of New Orleans*, the Illinois Central and later Amtrak passenger train made famous in the Steve Goodman song of the same name. The Line, commonly known as the Grenada District, originally extended from Memphis to Jackson. It was the route of IC's Chicago to New Orleans passenger trains including the *City* and the *Panama Limited*. It paralleled another line owned by the IC known as the Yazoo District between the same two points over which the IC routed most of its freight trains. IC recognized that it lacked sufficient through freight traffic to warrant retaining both routes. So it persuaded Amtrak to relocate *The City* to the Yazoo District, rerouted any through freight trains to the Yazoo District, and later sold the 175 mile long segment of the line between Southaven, MS (south of Memphis) and Canton, MS, to Grenada, a newly formed noncarrier subsidiary of A&K Materials, Inc. ("A&K").

While Grenada's 2009 NOE generated substantial controversy, the Board found insufficient evidence to warrant any revocation at that time. Subsequently, and contrary to representations that Grenada would rehabilitate and aggressively market the Line, Grenada filed a petition with the Board to abandon an 81 mile subsegment of the Line between Grenada and Canton in 2011. Grenada withdrew

that petition in the face of a protest filed by the State of Mississippi. Thereafter, Mr. Riley filed a new petition to revoke the NOE in September 2012. Among other matters, he alleged that the railroad had embargoed a bridge at milepost 656.4 on July 28, 2011, and further that the railroad embargoed the Line from MP 661 to MP 703.8, and that this embargo precluded the railroad from providing service to customers. In response to that petition, the Board issued a decision served July 1, 2013, directing Grenada to submit detailed responses to those allegations on July 22, 2013, and giving Mr. Riley and other parties until August 1 to submit reply comments.

IPH's INTEREST IN THIS PROCEEDING

IPH is a well respected member of the short line railroad community. It presently owns nine common carrier short line railroads serving numerous regions of the United States as well as two small railroads in the United Kingdom. It has a history of taking marginal lines that previous owners were unable to operate profitably and turning them into success stories. In fact, it acquired the Arizona Eastern Railway from short line holding company, RailAmerica, Inc., in 2006, expanded the traffic base, obtained Board authority to build a new 10-mile long branch, and sold the company in 2011 to short line holding company Genesee & Wyoming Inc., for many times its original purchase price. IPH acquired two other marginal properties from RailAmerica, Inc., namely the Texas-New Mexico

Railroad and the West Texas & Lubbock Railway, and substantially increased car loadings through aggressive marketing and the growth of frack sand and energy-related traffic. IPH has been recognized by two of its Class I railroad partners, BNSF Railway, Inc., and the Union Pacific Railroad Company, for its traffic growth and has received numerous marketing awards including one in 2013 from the American Short Line and Regional Railroad Association. IPH submits these comments because it believes that it would be a better candidate to own and operate the Line than Grenada. However, A&K has rebuffed IPH's overtures every time as IPH president Edwin Ellis describes in his verified statement attached to this filing.

ARGUMENT

A&K is a well known member of the railroad supply industry. It purchases new, previously owned, and scrap rail and other track materials ("OTM") and sells them to the railroad and rail transit industries. It is a leading supplier to the short line industry.

IPH wants to make clear that there is nothing wrong with the business of buying and selling second hand and scrap railroad track and OTM. While mainlines used for through freight service and passenger railroad service generally require high quality, new track components, railroads require this older second

hand material for repairing and even building branch lines, sidings, and yard tracks.

That said, however, for A&K (or any subsidiary thereof), to represent that it is acquiring a rail line for continued railroad service and then to downgrade the line for the express purpose of turning the railroad into a source of second hand track material inventory is a serious misrepresentation. To compound the problem by using the Board's expedited acquisition and operation procedures for facilitating the acquisition of track inventory is a serious misuse of those procedures warranting the relief sought by Mr. Riley. *See, e.g., SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL*, FD 33995, STB served Jan. 31, 2003 (also addressing an abandonment request by SF&L, hereafter cited as “*SF&L*”).

Unfortunately, A&K has a well documented history of using Board licensing procedures for new railroads as a way to acquire second hand track material inventory. Although it is generally known in short line railroad circles that A&K has made a practice of acquiring “active” rail line for the ultimate purpose of abandoning and scrapping them, IPH believes that the Board has only formally recognized that on two occasions. *SF&L, supra*, and *Roaring Fork Railroad Holding Authority—Abandonment Exemption—In Garfield, Eagle, and Pitkin*

Counties, CO., AB-547X, STB served May 21, 1999. IPH submits a selected list of A&K railroad-initiated abandonments in an exhibit attached to this filing.

There is a further reason why the Board should grant Mr. Riley's revocation request. IPH notes that Grenada imposed its embargo on July 28, 2011, some two years ago! There is substantial Board precedent on the imposition of embargoes. *See, e.g., GS Roofing Products Company, Inc., Et al*, No. 41230, STB served 1997; *Bar Ale, Inc., v. California Northern Railroad Co. and Southern Pacific Transportation Company*, FD 32821, STB served July 20, 2001; and more recently, *Central Oregon & Pacific Railroad, Inc.,-Coos Bay Rail Line*, FD 35130, STB served April 2008 (cited as "*CORP*").

As the Board stated in *CORP*, among many cases,

[u]nder 49 U.S.C. 11101(a), rail carriers have an obligation to provide rail service upon reasonable request. That obligation is not absolute, *Chicago & North Western Transportation Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 325 (1981), and may be temporarily suspended if the rail carrier is incapable of providing service. Such incapacity may arise from physical conditions affecting safety such as weather and flood damage, tunnel deterioration, or operating restrictions due to congestion. *Bar Ale*, slip op. at 6.

But a carrier is not given a free pass to choose not to serve just because of circumstances that make it difficult or expensive to provide service. In order for a cessation of service to be lawful, an embargo must be reasonable at the time it is issued, and the carrier's ongoing choice to maintain the embargo must continue to be reasonable as well. *Decatur County Commissioners, et al. v. The Central Railroad Company of Indiana*, STB Finance Docket No. 33386, slip op. at 19 (STB served Sept. 29, 2000), *aff'd sub nom. Decatur County Comm'rs v. STB*, 308 F.3d 710 (7th Cir. 2002); *GS Roofing Prods. Co. v. STB*, 143 F.3d 387, 392 (8th Cir. 1998). An embargo that extends beyond a reasonable time can be construed as an unlawful

abandonment. *Groome*, slip op. at 11. Thus, if a carrier is not going to repair a line over which service is requested within a reasonable time, it must initiate action to obtain abandonment or discontinuance authority. *Id.*

In *CORP*, the Board suggested that the railroad's embargo might have been reasonable when initially imposed but that it may have become an unlawful abandonment due to the passage of substantial time. Rather, the Board noted, the deterioration of tunnel structures that required the imposition of an embargo was likely the result of many years of deterioration and noninvestment. *Id.* at 4.

Similarly, to the extent that the failure of bridge components, if true as alleged, and track deterioration are the basis for Grenada's embargo, those defects did not happen overnight. They were not result of a catastrophic event such as a hurricane, a landslide, a flood, an earthquake, or similar causes. A&K is a sophisticated business concern. Like IPH, it probably undertook (or should have undertaken) a "due diligence" inspection of the line and its structures before buying them. If so, A&K would likely have noticed any bridge defects and could and should have taken action to correct them if it had any intention of operating the Line for any extended period. A&K's apparent failure to do so suggests that it did have eventual abandonment plans on its mind. The Board can probably take that fact as a rebuttable presumption and Mr. Riley's allegations would certainly put the Board and Grenada on notice. IPH urges that A&K's failure to either promptly make appropriate repairs or seek abandonment authority for *the entire line*

warrants a Board finding that Grenada has undertaken an unauthorized discontinuance of service.

Accordingly, the Board has several remedies available to it. It could force Grenada to reconvey the Line back to its prior owner, the IC [now Canadian National Railways]. *SF&L* would compel such a result. Or it could require Grenada to undertake repairs and restore service over the Line under *CORP*. While the Board probably cannot compel Grenada to seek abandonment authority or divest the Line to a third party, there are remedies available to others such as Feeder Line applications and adverse abandonment applications.

CONCLUSION

A&K and Grenada have not shown themselves to be worthy owners of the Line. The Board should take such action as it deems appropriate to remedy this situation. IPH recommends that A&K be forced to reconvey the Line back to IC and that someone else be given a chance to prove they can operate the Line in the public interest.

Respectively submitted,

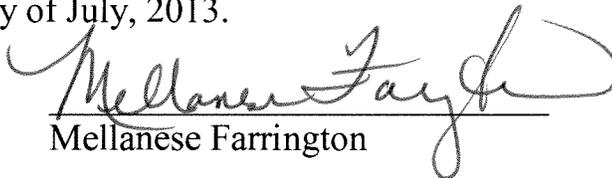
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Counsel for Commenter

Due: August 1, 2013

CERTIFICATE OF SERVICE

I, Mellanese Farrington, legal assistant to John D. Heffner, hereby certify that I sent a copy of the Reply Comments of Iowa Pacific Holdings, LLC, to all parties on the service list by first class U.S. mail and email (where addresses were available), this 31ST day of July, 2013.


Mellanese Farrington

:

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Dated: July 31, 2013

EXHIBIT

Selected Abandonment and Discontinuance Requests

Filed by A&K Materials subsidiary railroads

Gloster Southern Railway Company Docket No. AB-1051x

Trinidad Railway, Inc., AB-573x

Tulare Valley Railroad Company, Docket No. AB-397 (Sub. Nos. 1x, 3x-7x inclusive)

SF&L Railway, Inc., Docket No. AB-448, Sub. Nos. 1-2x

V&S Railway, LLC Docket No. AB 603x

VERIFIED STATEMENT OF EDWIN E. ELLIS

STATE OF Illinois)

)

ss

CITY OF Chicago)

Edwin E. Ellis, being duly sworn according to law, hereby deposes and states as follows:

I hold the position of President of Iowa Pacific Holdings, LLC, a short line railroad holding company, located at 118 S. Clinton Street, Suite 400, Chicago, IL 60661. I am authorized to make this sworn statement. The facts asserted below are true and accurate as stated, to the best of my knowledge, information, and belief.

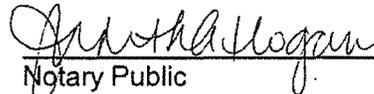
When A&K Materials first proposed abandoning 81 miles of its Grenada Railway subsidiary, I contacted the company and proposed that A&K sell the entire Grenada Railway to IPH. At first, A&K seemed interested, and we discussed setting up a hi-rail trip to inspect the line, but A&K cancelled the hi-rail trip, and terminated discussions about a sale. Subsequently, they withdrew their abandonment application.

On November 15, 2012, while riding the California Short Line Railroad Association inspection train sponsored by BNSF Railway, I was approached by Kern Schumacher, president of A&K. He asked me why I was interested in the Grenada line. I told him that I was familiar with the region, because my family was from that area, and there was a lot of business development potential. He told me that they were not interested in selling the line. He told me that their mistake in the prior abandonment filing was that they had not gotten the State of Mississippi "on board" with the abandonment, but that they were in the process of convincing them not to oppose the abandonment, and that they would again file for abandonment. I told him that if they did so we would jump back in because we believe it would be wrong to abandon a line with so much business development potential. He made it clear to me that our interest was unwelcome.

In conclusion, IPH supports petition for revocation filed by Robert Riley in the hope that the Surface Transportation Board will order Grenada to reconvey the entire line back to the Illinois Central Railroad for continued operation or for sale to a new owner like IPH that plans to solicit traffic and operate it on a long term basis.



Subscribed to and sworn to before me, a Notary Public, in and for the City of Chicago in the State of Illinois, this 29th day of July, 2013.



Notary Public

My commission expires: Jan 13, 2017

