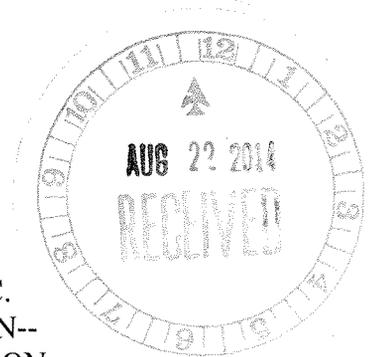


BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35838

WISCONSIN & SOUTHERN RAILROAD L.L.C.
--ACQUISITION AND OPERATION EXEMPTION--
CITY OF FITCHBURG AND VILLAGE OF OREGON

PETITION FOR EXEMPTION



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RAILROAD L.L.C.

Dated: August 22, 2014

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PETITION FOR EXEMPTION

Wisconsin & Southern Railroad L.L.C. (“WSOR”), a class II rail carrier, hereby petitions the Surface Transportation Board (“Board”) for an exemption from prior review and approval under 49 U.S.C. § 10902 of WSOR’s acquisition of the exclusive rail freight easement over the 15-mile rail line currently owned by the City of Fitchburg, Wisconsin and the Village of Oregon, Wisconsin (collectively the “Partnership”).

SUMMARY OF TRANSACTION

In STB Docket No. AB-33 (Sub-No. 119X), *Union Pacific Railroad Company – Abandonment Exemption – In Rock, Green and Dane Counties, WI*, Union Pacific Railroad Company (“UP”) sought to abandon its 15-mile line located between milepost 119.0, near Evansville, and milepost 134.0, near “MX” a crossing of the WSOR, near Madison, WI (the “Line”). The Partnership acquired the Line through the offer of financial assistance procedures. *See* STB Docket No. AB-33 (Sub-No. 119X), decision served November 20, 1998.

There has been no traffic on the Line since 1997. It has recently come to the attention of Wisconsin River Rail Transit Commission (“WRRTC”) that a shipper seeking rail service is locating in the Village of Oregon, WI. WRRTC has requested WSOR to initiate service over the

Line. Consequently, the Partnership is transferring the exclusive rail freight easement to WSOR. In a related proceeding, the Partnership is also transferring the physical assets of the Line to WRRTC. *See* Finance Docket No. 35843 Wisconsin River Rail Transit Commission – Petition For Declaratory Order – Rail Line in Dane, Green and Rock Counties, WI.

ARGUMENT

I. THE PROPOSED TRANSACTION SHOULD BE EXEMPTED FROM THE PRIOR APPROVAL REQUIREMENTS OF 49 U.S.C. § 10902.

Under 49 U.S.C. § 10902, prior Board approval is required for a Class II or Class III rail carrier to acquire the freight easement over an extended or additional rail line.

Pursuant to 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation when it finds that:

- (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and
- (2) either:
 - (a) the transaction is of limited scope, or
 - (b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the Board should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the Board's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to

determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation - Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. No. 422, 104th Cong., 1st Sess. 168-69 (1995).

In reviewing an exemption petition under Section 10502, the Board does not undertake a broader analysis than it would apply to a transaction under the statutory provision that would apply in the absence of the exemption. *Blackstone Capital Partners – Control Exemption – CNW Corp.*, 5 I.C.C.2d 1015, 1019 (1989)(“*Blackstone*”); *Vill. of Palestine v. I.C.C.*, 936 F. 2d 1335 (D.C. Cir. 1991). Section 10902(c) requires the Board to issue a certificate authorizing the transaction “unless the Board finds that such activities are inconsistent with the public convenience and necessity.”

A. Regulation Of The Proposed Transaction Is Not Necessary To Carry Out The Rail Transportation Policy.

An exemption from the requirements of Section 10902 for WSOR’s acquisition of the exclusive rail freight easement over the Line is consistent with the standards set forth in Section 10502. Detailed scrutiny of the transaction, through an application, is not necessary to carry out the rail transportation policy set forth in Section 10101. The Line has been out of service for about 17 years. A rail customer is locating along the Line and WSOR is willing to restart rail service on the Line. By minimizing the administrative expense of considering the proposed

transaction, the requested exemption will expedite regulatory decisions and reduce barriers to entry [49 U.S.C. §§ 10101(2) and (7)]. The proposed transaction will help promote a safe and efficient rail transportation system [49 U.S.C. § 10101(3)], ensure the continuation of a sound rail transportation system with effective competition among rail carriers [49 U.S.C. § 10101(4)], foster sound economic conditions in transportation and ensure effective competition [49 U.S.C. § 10101(5)], encourage honest and efficient management [49 U.S.C. § 10101(9)], and promote energy conservation [49 U.S.C. § 10101(14)]. Other aspects of the rail transportation policy will not be adversely affected.

B. The Proposed Transaction Is Of Limited Scope.

The Line is 15 miles in length and only a single rail served customer will be located on the Line. The Board and its predecessor have found the acquisition and operation of greater lengths of rail line to be limited in scope. *See, e.g., Ind. R.R. Co. – Acquisition & Operation – Ill. Cent. R.R. Co.*, 6 I.C.C.2d 1004, 1011 (1990)(acquisition of 90.3 miles of rail line found limited in scope); Finance Docket No. 31482, *Mid Michigan R.R. Co. – Purchase Exemption – The St. Joseph & Grand Island R.R. Co. Line Between St. Joseph, MO and Upland, KS* (not printed), served August 7, 1989 (acquisition of 107.3 miles of rail line found limited in scope); Finance Docket No. 32149, *Genesee & Wy. Indust., Inc. – Continuance in Control Exemption – Allegheny & E. R.R., Inc.* (not printed), served October 23, 1992 (acquisition of control of carrier operating 147.1 miles of rail line and serving 8 customers found limited in scope).

The proposed transaction will not have any measurable impact on the national, regional or local rail industry. Consequently, the proposed transaction is of limited scope.

C. Regulation Of The Proposed Transaction Is Not Necessary To Protect Shippers From An Abuse Of Market Power.

Even if the proposed transaction were not limited in scope, the transaction should nevertheless be exempted because the transaction will not result in any abuse of market power. The Line is currently dormant and WSOR intends to reinstitute rail service along the Line in order to service the single rail customer locating along the Line. Consequently, the proposed transaction will not result in an abuse of market power. Rather, the proposed transaction, overall, will enhance competition. Accordingly, regulation is not necessary to protect shippers from an abuse of market power.

II. LABOR PROTECTION.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption power to relieve a rail carrier of its statutory obligation to protect the interests of employees. Because WSOR is Class II rail carrier, the transaction is subject to the labor protection requirements of 49 U.S.C. § 11326(b) and *Wisconsin Central Ltd. – Acquisition Exemption – Lines of Union Pacific Railroad*, 2 S.T.B. 218 (1997).

III. Labor Notice.

The provisions of 49 C.F.R. § 1121.4(h), require a Class II rail carrier filing for a transaction under Section 10902 to provide labor notices to employees working on the Line. No employee, however, has worked on the Line since 1997. Consequently, WSOR is seeking a waiver of the notice requirement set forth in Section 1121.4(h).

IV. Interchange Commitment.

The Freight Easement Deed and Agreement between WSOR and the Partnership will not contain any provision that prohibits WSOR from interchanging traffic with a third party or limits WSOR's ability to interchange with a third party.

V. ENVIRONMENTAL AND HISTORIC IMPACTS.

WSOR is acquiring the exclusive rail freight easement for continued rail operations. Further Board approval is required for WSOR to abandon any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Petition for Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

WSOR's acquisition of the rail freight easement will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. WSOR's acquisition of the rail freight easement will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

CONCLUSION

Regulation of the proposed transaction is not necessary to carry out the rail transportation policy. Also, the proposed transaction is limited in scope. Furthermore, regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. Consequently, WSOR respectfully request that the Board exempt from the prior approval requirement the proposed acquisition by WSOR of the exclusive rail freight easement over the Line.

Respectfully submitted,

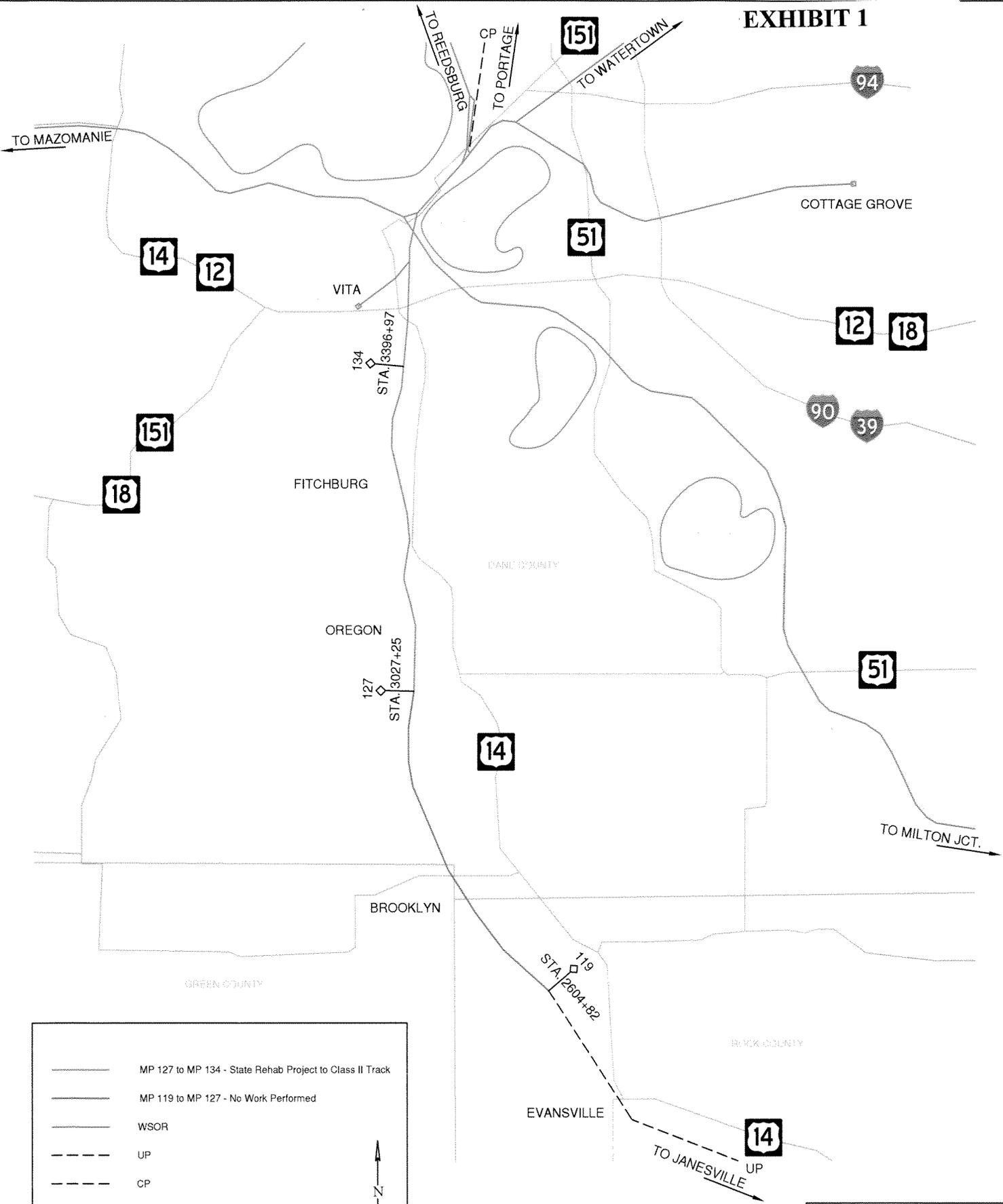
A handwritten signature in cursive script that reads "Karl Morell". The signature is written in black ink and is positioned above a horizontal line.

Karl Morell
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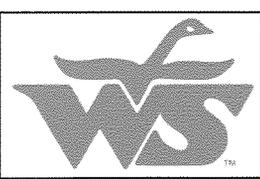
Counsel for WISCONSIN & SOUTHERN RAILROAD L.L.C.

Dated: August 22, 2014

EXHIBIT 1



DATE: 1-6-14
SCALE: NONE
DIVISION: SOUTHERN
DRAWN BY: EJM
CHECKED BY:
SURVEY BY:



WISCONSIN & SOUTHERN RAILROAD	
EXHIBIT A	
PROPERTY DELINEATION	
REEDSBURG SUB REACTIVATION	
REVISION: 0	SHEET: 1 OF 1
WSOR-PROP-REE-ACTIV	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition has been served on the following entities by first class mail this ^{22d} day of August, 2014:

The Honorable Scott K. Walker
Governor
State Capitol
115 East Capitol
Madison, WI 53702

Wisconsin Department of Transportation
P.O. Box 7999
Madison, WI 53707-7910



Karl Morell