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233066

September 25, 2012

ENTERED  
Office of Proceedings  
September 28, 2012  
Part of Public Record

Cynithia T. Brown, Chief  
Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, SW, Room #100  
Washington, DC 20423-0001

RE: STB Finance  
Docket No. 35247, Grenada Railway, LLC – Acquisition and Operation Exemption  
– Illinois Central Railroad Company STB Docket No. FD\_35247\_0, and Kern W.  
Schumacher-Continuance in Control Exemption-Grenada Railway, LLC and Natchez  
Railway LLC STB Docket No. FD\_35249\_0.

Petition to Revoke

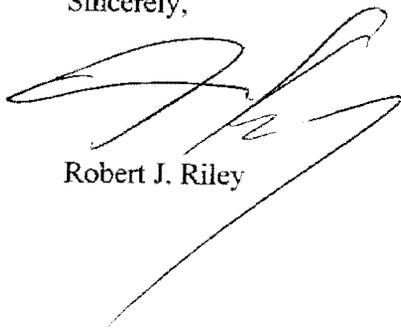
Dear Ms. Brown:

Enclosed for filing in the subject proceeding is the Petition for Leave to File Response concerning the Grenada Railway's reply.

I certify that a copy of this letter this day has been served on each party of record by facsimile transmission or United States Mail.

Please let me know if I can be of any further assistance.

Sincerely,



Robert J. Riley

**SURFACE TRANSPORTATION BOARD**

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**DOCKET No. FD 35247**

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

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**PETITION FOR LEAVE TO FILE RESPONSE  
Of  
ROBERT J. RILEY**

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I, Robert J. Riley, pursuant to 49 C.F.R. §1110.9, hereby respectfully seeks the waiver of 49 C.F.R. §1104.13(c) to file a brief response to the Grenada Railway's ("GRYR") reply to my Petition to Revoke.

I am mindful of the general rule of 49 C.F.R. §1104.13(c) that filing of a reply to a reply is not permitted. The Board, however, has granted leave to file responses when they have been limited to the issues raised in the protests, when they have been timely filed so as not to jeopardize the Board's ability to meet its statutory deadlines and when

acceptance of the responses has provided a more complete record for the Board's consideration.

See, i.e.. Docket No. AB 6 (Sub-No.477X), BNSF Railway Company-Abandonment Exemption-in Los Angeles County, Cal., served September 16,2011

Docket No. AB 1053 (Sub-No. IX), Michigan Air-Line Railway Co.-Abandonment Exemption-in Oakland County, Mich., served May 18, 2011;

My response well satisfies those standards.

**Collateral Estoppel Defense:**

In Mr. Fritz Kahn's reply he states , "Collateral Estoppel" (CE) as a defense to my revocation petition. Mr. Kahn being an experienced attorney in these types of proceedings I would have expected to come up with a defense argument that was at least on par with the instant proceeding. Collateral Estoppel does not apply to this case for 3 reasons.

(1) Collateral Estoppel does not bar future litigation over issues not actually raised in the original judicial proceeding. My petition introduces new evidence against the Grenada Railway that was not available when Representative Bondurant's filed his petition. Representative Bondurant wanted to revoke based on the fact that the Grenada Railway did not disclose that the Grenada Railway was affiliated by A&K Railroad Materials and that this affiliation caused him to believe that the Grenada Railway did not have good intentions of operating the railroad. Representative Bondurant also stated that since the Grenada Railway had two milepost locations stated incorrectly, that the Grenada Railway's exemption was inaccurate.

In my Petition to Revoke, the new evidence that I introduced and the new issues that I bring forth that was not in Representative Bondurant's include :

- Pointing out the promises made to the public and to the board by the Grenada Railway that were later broken
- How service was guaranteed for two years, then exactly two years later, plans for the abandonment proceeding began
- Embargoing the line after the expiration of two years
- "Finding" a bridge to point at, Also at the 2 year expiry
- Increased shipping rates
- Servicing customers in a way that led to excessive demurrage and poor service
- Line segmentation
- Decreased safety of the line by deactivating the signals, lowering the class of track, and not maintaining hot box detectors as directed by the FRA
- Unwillingness of working with a connecting railroad to work out an effective interchange agreement
- Removing track without prior board approval
- False and misleading information in the Grenada Railway Abandonment Exemption
- Pointing out similarities between the Grenada Railway and SF&L case
- Pointing out no evidence of a pre-sale inspection or cost analysis

(2) I, Robert J. Riley, was not party of nor privy to the original revocation petition filed by Representative Bondurant nor do I have any affiliation with Representative Bondurant. Therefore the Due Process clause of the United States constitution applies to the instant matter in question.

(3) While I would certainly agree had I been involved with and participated in any decided previous attempts to revoke the defendants petition, CE would certainly apply. However being party to an Undecided and Withdrawn before any adjudication abandonment application hardly relieves me of my due process under the United States Consitution to be heard.

Just because the defendant saw that the political and legal climate was certainly not going in their favor during their previous abandonment attempt in no way shape form nor fashion can insulate them from the litigation that their shenanigans produces. Any litigation that the defendant endures as a result of this entire ordeal is the result of there own hand. Any disdain for it is unfounded and can be likened to the premise that if you do not wish to be stung by a hornet, why stand under the nest when you smack it with a broom? Over the years A&K and affiliated railroads have done the same thing over and over by buying railroads and then abandoning them. Yet time and time again as evidenced here claims of undue litigation over it arrise. Albert Einstein coined a term for this very phenomenon, "Doing the same thing over and over and expecting different results equates to insanity". This in my opinion holds true here. The defense of CE in this case is certainly without any merit nor is there any legal basis for it to stand. If this were the case then when the inevitable follow up abandonment filing by GRYR should be declared moot on the basis of CE. This argument would certainly have no merit as is Mr. Kahn claiming CE in the instant matter. Mr. Kahn linking me to an undecided and withdrawn petition is the only basis for the possibility of the CE defense. By their own hand, they withdrew their petition before litigation and a final decision thereby rendering their CE defense moot.

**Explanation of Exhibit I:**

In GRYR's reply, GRYR makes note on page 6 that I did not offer explanation of exhibit I. Exhibit I is an email sent by the FRA to Mr. Richard Parker, who is a citizen of Enid, MS, located near mile 467 on the north end Grenada Line. On October 15, 2012, the FRA responded to the GRYR's application to discontinue the Automatic Block Signaling system over the entire GRYR line. In the FRA's response, the FRA allowed the signaling system to be discontinued over the line south of Grenada, but required the signals north of Grenada to be kept active. The FRA also required GRYR to keep the two hot box detectors on their line to be kept in good working condition. I included this response from the FRA in my petition as exhibit H.

So, Mr. Parker, who lives about 11 miles south of the hot box detector near mile 456, discovered by listening to his scanner, that this hot box detector was not operating properly. Having knowledge of the FRA order and being a good citizen concerned about the safety of trains passing through his community, this prompted Mr. Parker to contact the FRA about the matter via email. The FRA responded to Mr. Parker via email, and I included this email as exhibit I.

**Accusations of Criticizing the Board:**

In GRYR's reply on page 6, GRYR accuses me of failing to realize that I have accused the STB and the ICC in citing the many previous cases where A&K and affiliated companies have abandoned rail lines. This could not be further from the truth. I cited these cases without having any intentions of accusing the board, but rather, I cited

these cases to show how A&K, over many years of acquiring and abandoning rail lines, have become very successful at “playing the game”, if you will. In other words, A&K’s Officers have become professionals at the art of acquiring a rail line with seemingly good intentions of operating the line, then finding creative ways to drive off business and show a loss where the board will have almost no choice but to allow the many abandonments A&K has succeeded at.

**Bringing up Past Evidence and Arguments:**

Throughout GRYR’s reply, GRYR brings up many times that I have grabbed bits and pieces of protest statements and reply’s from the GRYR abandonment proceeding last year. Indeed, this is true and I did not hide this fact in my Petition as you can see that I cited where I got all of my information. However, I am the first person since GRYR acquired this line in 2009, to combine evidence from all the participating parties to form a reasonable and strong argument showing that due to the incredible timing of events that could not be a coincidence, that GRYR acquired this line for the sole purposes of salvaging the track.

**Complaints from Shippers:**

In GRYR’s reply on page 8, GRYR states that no rail customers have filed a complaint with the board regarding having inadequate rail service. This is simply not true. In the GRYR abandonment proceeding last year, replies were sent to the board from 3 rail customers and 1 interchanging railroad that did complain about either poor service or excessive charges. The customers and railroads that replied are Winona

Hardwood, Abitibowater (name has now changed to Resolute Forest Products), Tri-County Co-Op and the Kosciusko and Southwestern Railway.

I have already gone into detail to the board in my Petition of Winona Hardwood and the Kosciusko & Southwestern Railway's replies, but I did not go into detail about Abitibowater or Tri-County Co-Op.

In Abitibowater's reply, they state that "...the GRYR has since the purchase of the line from the Canadian National Railway (Illinois Central) some one and a half years ago, engaged in a strategy to systematically discourage traffic over the southern section, through reductions in service levels and by increasing rates by 40%." Abitibowater also states that "We believe that the GRYR intentionally drove customers like us away from the line in order to make a credible case for abandonment, without taking into consideration the potential negative economic impacts such actions would have on existing customers and the regional economy."

In Tri-County Co-Op's reply, they state that "...we have never had to deal with the outrageous fees and poor service that we have received through Grenada Railway LLC when we were dealing with other rail companies such as CN. Immediately upon taking over the rail, Grenada Railway LLC proceeded to charge outlandish demurrage fees and deliver less than adequate service. It is quite obvious that pleasing the customer is not company policy with Grenada Railway LLC. They were famous for dropping railcars on Friday evening after working hours and charging fees when the cars were not empty by Sunday evening - a problem that we never experienced with CN. It seems as if the company has actually been trying to eliminate small business transactions on the rail with

the fees they have been charging and the service they have been providing.”

It seems to me that Tri-County Co-Op was experiencing the exact same problems as Winona Hardwood in regard to GRYR leaving cars unexpectedly then being charged excessive demurrage. It also is evident here that Tri-County Co-Op, without participating in this particular proceeding, definitely would support CN getting this line back.

**Bridge at Mile 656.4:**

In GRYR’s reply, on page 8 and 9, GRYR brings back up the fact that this bridge in question still needs \$784,000 to repair. The conditions of this bridge was disputed by the Mississippi Transportation Commission (“MTC”), Joe Marascalco, and myself. The MTC hired C&S Engineers to conduct an on-site inspection of this bridge. C&S found the bridge to be “...in good condition overall and is safe for normal operation.” The full report of their study can be found in the MTC’s reply to the GRYR abandonment last year.

To look at this situation at a different angle, lets just suppose that GRYR really and truly believes this bridge is in such bad shape that they don’t believe a train can pass safely. The bridge is located at mile 656.4, and the GRYR’s embargo is in effect from West, MS (mile 661) to the south end of their line at mile 703.8. In this embargoed section of track, lies the Kosciusko & Southwestern Railway’s connection at Aberdeen JCT (mile 673.5) and rail customers Burrows Paper (mile 685.2) and Tri-County Co-Op (mile 685.4). The GRYR could still be providing service right now to these customers without having to go over the bridge in question via interchanging with CN at

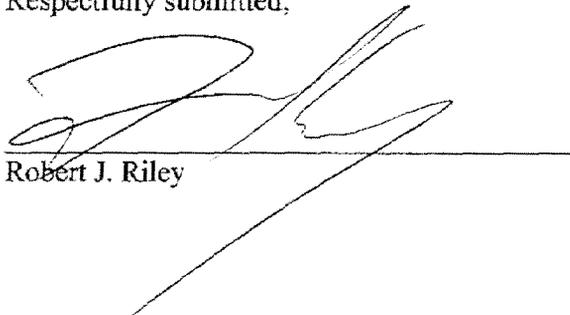
MP 703.8 This is further evidence that GRYR simply does not want to operate south of Grenada regardless of the circumstances.

**Track Removal**

In GRYR's reply on page 9, GRYR has a footnote that says the removal of the rails is intended as a derail and not track removal, and this prevents anyone from operating a train over the embargoed bridge. If you look close at the photo in the petition you can see where a derail was on to be removed and the track disassembled. If this measure was only to prevent a train from operating over the bridge, two derails placed immediately on either side of the bridge at mile 656.4 would be all that's needed. If this "derail" was intended to prevent trains from operating over the entire embargoed section of track, then placing derails where the embargo begins at West, MS at mile 661 and at the end of their property at mile 703.8 would be more appropriate. The removed sections of track are at mile 625.6 and at mile 703.8. The northern section of removed track at mile 625.6 is some 30.8 miles north of where the embargo limits at the "Bridge" around West, MS.

WHEREFORE, petitioner Robert J. Riley respectfully requests that pursuant to 49 USC 10101, to Revoke the Notice of Exemption served on May 13, 2009.

Respectfully submitted,



Robert J. Riley