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May 3, 2016

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Office of Proceedings
May 3, 2016
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Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

*Re: Docket No. AB 6 (Sub-No. 493X), BNSF Railway Company –
Abandonment Exemption – in Cook County, Illinois*

Dear Ms. Brown:

Enclosed for filing are the original and ten copies of BNSF Railway Company's Petition for Exemption under 49 U.S.C. § 10502. Also enclosed is a check covering the \$6,700 filing fee.

If you have any questions, please call me.

Sincerely,

A handwritten signature in cursive script that reads "Karl Morell".

Karl Morell

Enclosures

FEE RECEIVED
May 3, 2016
SURFACE
TRANSPORTATION BOARD

FILED
May 3, 2016
SURFACE
TRANSPORTATION BOARD



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

BNSF RAILWAY COMPANY)
ABANDONMENT EXEMPTION) **DOCKET NO. AB-6**
IN COOK COUNTY, ILLINOIS) **(SUB-NO. 493X)**

PETITION FOR EXEMPTION

BNSF RAILWAY COMPANY
2650 Lou Menk Drive
P.O. Box 96157
Fort Worth, TX 76161-0057

James M. Mecone
Assistant General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828

Karl Morell
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Suite 225
655 Fifteenth Street, N.W.
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(202) 595-9045

Dated: May 3, 2016

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

BNSF RAILWAY COMPANY)	
ABANDONMENT EXEMPTION)	DOCKET NO. AB-6
IN COOK COUNTY, ILLINOIS)	(SUB-NO. 493X)

PETITION FOR EXEMPTION

BNSF Railway Company ("BNSF") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, BNSF's abandonment of approximately 0.89 miles of rail line located in Cook County, Illinois.

PROPOSED TRANSACTION

BNSF proposes to abandon approximately 0.89 miles of track on the Lumber District Lead beginning just west of Laflin Street at Engineering Station 118+00 and proceeding east along West Cermak Road to the most easterly point at Engineering Station 157+65 and heading north along the Sangamon Street Lead at Engineering Station 163+50, including both legs of the wye, in Chicago, Cook County, Illinois (the "Line"). The Line traverses U.S. Postal Service Zip Code 60608. A map of the Line is attached as **Exhibit A**.

Based on information in BNSF's possession, the Line does not contain federally granted rights of way. Any documentation in BNSF's possession will be made available to those requesting it.

STATEMENT OF FACTS

BNSF owns approximately 0.89 miles of track on the Lumber District Lead beginning just west of Laflin Street at Engineering Station 118+00 and proceeding east along West Cermak Road to the most easterly point at Engineering Station 157+65 and heading north along the Sangamon Street Lead at Engineering Station 163+50, including both legs of the wye, in Chicago, Cook County, Illinois. BNSF intends to exercise the abandonment authority. On August 5, 2014, Colonial Brick Company, Inc., the only customer on the line, was embargoed after a derailment due to track condition. Colonial Brick does not oppose the abandonment of this Line. No traffic has moved on the Line since August 2014. There is no overhead traffic on the portion of the Line proposed for abandonment.

EXEMPTION REQUESTED

BNSF seeks an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 to permit BNSF to abandon this 0.89-mile rail line.

Under 49 U.S.C. § 10502, the STB 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 STB 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 STB's predecessor to use liberally 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. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application of 49 U.S.C. § 10903 Is Not Necessary to Carry Out the Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal abandonment application, expedite regulatory decisions and reduce regulatory barriers to exit [49 U.S.C. § 10101(2) and (7)]. *See, e.g., Norfolk & W. Ry. Co. – Abandonment Exem. – Cinn., Hamilton County, OH*, 3 S.T.B. 110 (1998); STB Docket No. AB-367 (Sub-No. 2X), *Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA* (not printed), served September 17, 1997 (“*Georgia Central*”). By abandoning the Line, BNSF will be able to avoid the significant opportunity costs associated with retaining this Line. Granting the exemption will thus foster sound economic conditions and encourage efficient management. 49 U.S.C. § 10101(5)

and (9). *See, e.g.*, STB Docket No. AB-497 (Sub-No. 1X), *Minnesota Northern Railroad, Inc. – Abandonment Exemption – In Red Lake and Polk Counties, MN* (not printed), served November 14, 1997; STB Docket No. AB-318 (Sub-No. 4X), *Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA* (not printed), served August 26, 1997.

Other aspects of the rail transportation policy are not adversely affected. For example, competition and the continuation of a sound rail transportation system are not affected as the only customer on the Line, Colonial Brick, has not utilized service on the Line for over a year, and does not oppose the abandonment.

B. This Transaction Is of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. *See, e.g.*, Docket No. AB-6 (Sub No. 349X), *Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO* (not printed), served August 27, 1993; Docket No. AB-347 (Sub-No. 1X), *Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL* (not printed), served January 16, 1992.

The proposed transaction is clearly of limited scope. BNSF is seeking to abandon a 0.89-mile line that traverses downtown city streets in Chicago, Illinois. The shortness of the Line and the limited geographic area involved demonstrate the limited scope of the proposed abandonment. *See, e.g.*, Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties, CA* (not printed), served February 9, 1995.

C. This Transaction Will Not Result in an Abuse of Market Power

There is only one shipper on the Line. The last remaining customer on the Line, Colonial Brick, has operated without moving traffic on the Line for over a year, and does not oppose the abandonment. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g.,* STB Docket No. AB-55 (Sub-No. 576) *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*.

ENVIRONMENTAL AND HISTORIC REPORTS

The Environmental Report and the Historic Report containing the information required by 49 C.F.R. §§ 1105.07 and 1105.08 were forwarded to the Board on March 3, 2016.

CERTIFICATES OF SERVICE

The Certificate of Service of the Environmental and Historic Reports is attached to the Petition as **Exhibit B**. The Certificate of Service for this Petition for Exemption is attached as **Exhibit C**.

CERTIFICATE OF PUBLICATION

The Certificate of Publication is attached as **Exhibit D**.

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as **Exhibit E**.

LABOR PROTECTION

The interests of railroad employees who may be adversely affected by the proposed abandonment will be adequately protected by the labor protection conditions in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition, nor is STB regulation required to protect shippers from an abuse of market power. Moreover, this abandonment is of limited scope. Accordingly, BNSF respectfully urges the Board to grant this petition.

Respectfully submitted,



James M. Mecone
Assistant General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, Texas 76131-2828

Karl Morell
Karl Morell & Associates
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 595-9045

Dated: May 3, 2016

EXHIBIT B
CERTIFICATE OF SERVICE
ENVIRONMENTAL AND HISTORIC REPORTS

The undersigned hereby certifies that, in Docket No. AB-6 (Sub-No. 493X), the transmittal letter required by 49 C.F.R. § 1105.11, was mailed to all agencies listed in 49 C.F.R. § 1105.7(b), via first class mail on the 3rd day of March, 2016.

The undersigned hereby certifies that a copy of the Environmental and/or Historic Reports in Docket No. AB-6 (Sub-No. 493X) was served by first class mail on the 3rd day of March, 2016 on the following:

Ms. Victoria Rutson
Chief, Office of Environmental Analysis
Surface Transportation Board
395 E Street S.W.
Washington, DC 20423-0001

Chicago Plan Commission
City Hall
121 N. LaSalle Street
Chicago, Illinois 60602

Cook County
Department of Planning and Development
69 W. Washington, Suite 290
Chicago, Illinois 60602

Mr. Simon Monroe
Room 9452
National Geodetic Survey
1315 East-West Highway
Silver Spring, MD 20910-3282

U.S. Army Corps of Engineers
Chicago District
231 LaSalle Street, Suite 1500
Chicago, Illinois 60604

U.S. Department of the Interior
Bureau of Land Management
Eastern States Offices
20 M Street SE, Suite 950
Washington, DC 20003

Ken Westlake
U.S. EPA Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

U.S. Fish and Wildlife Service
Chicago Illinois Field Office
1250 South Grove, Suite 103
Barrington, Illinois 60010

Cam Sholly, Regional Director
National Park Service
Midwest Region
601 Riverfront Drive
Omaha, Nebraska 68102-4226

Eric A. Gerth
NRCS Illinois State Office
2118 W. Park Court
Champaign, Illinois 61821

James P. Casey
Illinois Department of Natural Resources
Coastal Management Program
160 N. LaSalle Street, Suite S-703
Chicago, Illinois 60601

Illinois Environmental Protection Agency
P.O. Box 19276
Springfield, Illinois 62794-9276

Office of the Governor
James R. Thompson Center
100 W. Randolph, 16-100
Chicago, Illinois 60601

Rachel Leibowitz, Ph.D.
Deputy State Historic Preservation Officer
Illinois Historic Preservation Agency
1 Old State Capitol Plaza – Journal Register Building
313 South Sixth Street
Springfield, Illinois 62701


KARL MORELL

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Dated: May 3, 2016

EXHIBIT C

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Petition for Exemption in Docket No. AB-6 (Sub-No. 493X) was mailed via first class mail on May 3, 2016, to the following parties:

State Public Service Commission

Illinois Commerce Commission
527 East Capitol Avenue
Springfield, Illinois 62701

Military Traffic Management Command

Military Surface Deployment and Distribution Command Transportation
Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Building 1900W
Scott AFB, Illinois 62225-5006

National Park Service

U.S. Department of the Interior
National Park Service
Recreation Resources Assistance Division
1849 C Street, NW
Washington, DC 20240-0001

Cam Sholly, Regional Director
National Park Service
Midwest Region
601 Riverfront Drive
Omaha, Nebraska 68102-4226

U.S. Department of Agriculture

U.S. Department of Agriculture
Chief of the Forest Service
4th Floor N.W., Yates Building
201 14th Street, SW
Washington, DC 20250

Shipper

Phil Mumford, Jr.
Colonial Brick Company, Inc.
2222 S. Halsted Street
Chicago, Illinois 60608

Karl Morell

KARL MORELL

Karl Morell & Associates
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 595-9045

Dated: May 3, 2016

EXHIBIT D

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-6 (Sub-No. 493X) was published on April 25, 2016, in the Daily Herald, a newspaper of general circulation in Cook County, Illinois as required by 49 C.F.R. § 1105.12.



KARL MORELL

Karl Morell & Associates

Suite 225

655 Fifteenth Street, N.W.

Washington, D.C. 20005

(202) 595-9045

Dated: May 3, 2016

EXHIBIT E
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-6 (Sub-No. 493X)

BNSF RAILWAY COMPANY
--ABANDONMENT EXEMPTION--
COOK COUNTY, ILLINOIS

On May 3, 2016, BNSF Railway Company (“BNSF”) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provision of 49 U.S.C. 10903 for BNSF to abandon approximately 0.89 miles of track on the Lumber District Lead beginning just west of Laflin Street at Engineering Station 118+00 and proceeding east along West Cermak Road to the most easterly point at Engineering Station 157+65 and heading north along the Sangamon Street Lead at Engineering Station 163+50, including both legs of the wye, in Chicago, Cook County, Illinois (the “Line”). The Line traverses U.S. Postal Service Zip Code 60608.

The line does not contain federally granted rights-of-way. Any documentation in the railroad’s possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in Oregon Short Line R. Co. – Abandonment – Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued within 90 days (by _____, 2016).

Any offer of financial assistance under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,600. *See* 49 C.F.R. 1002.2(f)(25).

All interested person should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any

request for a public use condition under 49 C.F.R. 1152.28 and any request for trail use/rail banking under 49 C.F.R. 1152.29 will be due no later than 20 days after notice of the filing of the petition for exemption is published in the *Federal Register*. Each trail use request must be accompanied by a \$300 filing fee. *See* 49 C.F.R. 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB-6 (Sub-No. 493X) and must be sent to: (1) Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001, and (2) James M. Mecone, BNSF Railway Company, 2500 Lou Menk Drive, AOB-3, Fort Worth, Texas 76131-2828.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0295 [Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339.]

An environmental assessment (EA) (or environmental impact statement (EIS)), if necessary prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact the Office of Environmental Analysis. EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: _____ 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceeding