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July 19, 2013

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, D. C. 20423

234552  
ENTERED  
Office of Proceedings  
July 18, 2013  
Part of  
Public Record

re: Docket No. FD 35247, Grenada Railway, LLC--Acquisition and Operation  
Exemption--Illinois Central Railroad Company and Waterloo Railway  
Company

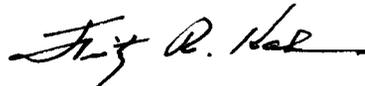
Dear Ms. Brown:

Attached for filing in the subject proceeding is the Response of the Grenada  
Railway, LLC to the Decision of the Board, served July 1, 2013.

Copies of this letter and its attachment this day are being mailed by me to each  
party or record, via prepaid first-class postage.

If you have any question concerning this filing or I otherwise can be of assistance,  
please let me know.

Sincerely yours,



Fritz R. Kahn

att.

cc: Hon. Sid Bondurant  
Mr. Don R. Brown  
Mr. Robert Riley  
Hon. Roger F. Wicker

SURFACE TRANSPORTATION BOARD

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Docket No. FD 35247

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

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RESPONSE  
OF GRENADA RAILWAY, LLC

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Attorney for

GRENADA RAILWAY, LLC

Dated: July 19, 2013

SURFACE TRANSPORTATION BOARD

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Docket No. FD 35247

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

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RESPONSE  
OF GRENADA RAILWAY, LLC

Petitioner, Grenada Railway, LLC ("GRYR"), in compliance with the Board's  
Decision, served July 1, 2013, responds, as follows:

(A) a map showing the location of :

- (i) the out-of-service bridge that is listed as the reason for embargo  
GRYR000111.
- (ii) the end point of this embargo.
- (iii) each rail station subject to this embargo.
- (iv) the point of interchange with ICR near Canton.
- (v) each shipper and receiver south of this bridge that was served by  
GRYR prior to the embargo
- (vi) each shipper and receiver south of this bridge that could be served  
were it not for the embargo, and
- (vii) the sections of removed track;

The map is attached.

(B) a list of the mileposts corresponding to:

- (i) the end points of embargo GRYR000111: MP 656.4, MP 703.8.

- (ii) each rail station subject to this embargo: West MP 661.1, Durant MP 670.6, Goodman MP 678.4, Pickens MP 685.5 and Vaughn MP. 691.9.
  - (iii) the point of interchange with ICR near Canton: MP 703.8
  - (iv) the location of each shipper and receiver south of the above-referenced bridge that was served by GRYR prior to the embargo: Burrows Paper Corp. at Pickens MP 685.2 and Tri-County Cooperative at Pickens MP 685.4.
  - (v) the location of each shipper and receiver south of this bridge that could be served were it not for the embargo: Burrows Paper Corp. at Pickens MP 685.2
  - (vi) the section of removed track: MP 625.6, MP 703.8.
- (C) the name and address of each shipper and receiver south of the above-referenced bridge that was served by GRYR prior to the embargo: Burrows Paper Corp., P.O. Box 98, Pickens, MS 39146 and Tri-County Cooperative, 564 Yazoo Street, Pickens, MS 39146
- (D) the name and address of each shipper and receiver south of the above-referenced bridge that could be served were it not for the embargo: Burrows Paper Corp., P. O. Box 98, Pickens, MS 39146, Tri-County Cooperative having relocated and closed its facility that was rail served.
- (E) a statement as to whether or not it is possible to serve shippers south of the above-referenced bridge that could be served were it not for the embargo: It is theoretically possible for GRYR to serve Burrows Paper Corp. at Pickens, but it would be prohibitively costly for it to do so. Burrows Paper Corp. received 12 carloads of freight in 2009, 11 carloads in 2010, and 24 carloads in 2011 before the bridge at MP 656.4 was embargoed. Its outbound shipments of paper and paper products were and continue to be handled by truck. None was tendered for transportation by GRYR. For GRYR to arrange for a locomotive and crew to operate on the 20-mile segment between Pickens and Canton to handle on average a single carload a month of freight consigned to Burrows Paper Corp. makes no economic sense. "A carrier cannot be compelled to carry even a branch of business at a loss . . ." *Brooks-Scanlon v Railroad Commission of Louisiana*, 251 U.S 396, 399 (1920). "Unprofitable operations of the [line's segment] would burden [GRYR] and interstate commerce. This burden outweighs the burden on shippers resulting from a loss of rail service." *Illinois Central Gulf R. Co.--Abandonment*, 363 I.C.C. 690, 703 (1980), *aff'd sub nom. Bloomer Shippers Ass'n v. ICC*, 679 F..3d 668 (7th Cir. 1982). GRYR discussed with Burrows Paper Corp. about accepting its cars at Grenada and transloading the freight

for delivery by truck to Pickens, but the company did not consider that to be a cost effective way of receiving its product.

- (F) if any portion of the embargo and/or sections of removed track is greater than one mile from the above-referenced bridge, an explanation as to why the embargo and or sections of removed track are not limited to the immediate vicinity of this bridge. An inspector of the Federal Railroad Administration directed GRYR to turnover a 39-foot section the line at or near MP 625.6 and another 39-foot section of the line at or near MP 703.8 in order that the operating signals south of Grenada could be suspended and turned off. The removal of the track avoided the risk of the embargoed bridge being crossed inadvertently.<sup>1</sup> The only shipper situated between the north end of the bridge and MP 625.6 was Winona Hardwood, Inc., 166 Sawyer Loop, Winona, MS 38967, a shipper of wood and wood products, commodities which are exempt, 49 C.F.R. § 1039.10, and accordingly need not be transported by GRYR. *Rail Exemption--Lumber or Wood Products*, 7 I.C.C.2d 673 (1991). The only shipper situated between the south end of the bridge and MP. 703.8 was Burrows Paper Corp., discussed in the preceding paragraph.

In the view of GRYR, the railroad bridge at MP 656.4, built in 1914, literally was falling apart. It was for this reason that the embargo, GRYR 000111, was imposed on July 28, 2011. Shortly thereafter, on September 20, 2011, GRYR filed its Petition for Exemption to obtain the Board's authorization to abandon the 81.3-mile southern half of the GRYR, between MP 622.5 near Grenada, MS, and MP 703.8 near Canton, MS. STB Docket No. AB 1087X, *Grenada Railway LLC--Abandonment Exemption--in Grenada, Montgomery, Carroll, Holmes, Yazoo and Madison Counties, Miss.*

Landreth Engineering of Albuquerque, NM, engaged by GRYR, was of the opinion that the bridge at MP 656.4 required replacement, and estimated the cost of replacing the bridge to be \$784,000. In his protest filed October 5, 2011, in the abandonment proceeding, Mr. Riley contended that the bridge did not require

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<sup>1</sup> "[R]emoval of the track, by itself, has no effect on the regulatory status of the line." Docket No. AB-1081-X, *San Pedro Railroad Operating Company, LLC--Abandonment Exemption--in Cochize County, AZ*, served April 13, 2006.

replacement and was in no worse condition than it had been for years. He, however, offered no estimate of what it would cost to repair the bridge. The Mississippi Transportation Commission in its protest filed October 27, 2011, in the abandonment proceeding included the October 21, 2011, Bridge Inspection Report of C&S Engineers, Inc. of Syracuse, NY. While contending that the bridge was safe for normal operations, the Bridge Inspection Report acknowledged that Pier 5 of the bridge had settled, with the resulting effects on the span 5 and 6 ballast pans. The Bridge Inspection Report anticipated that remedial action would need to be taken but offered no estimate of the cost of the remedial action.

GRYR believed that without doubt its Petition would be denied by the Board. It, therefore, sought to withdraw its Petition, and the Board, by its Decision served November 10, 2011, granted GRYR's request and discontinued the abandonment proceeding. The embargo of the bridge, however, has remained in effect in the intervening two years.

In its Decision in STB Finance Docket No. 33386, *Decatur County Commissioners, et al v. the Central Railroad Company of Indiana*, served September 29, 2000, *aff'd sub nom. Decatur County Commissioners v. STB*, 308 F.3d 710 (7th Cir. 2002), the Board declared:

"An embargo can be issued by a carrier to temporarily cease or limit service when it is physically unable to serve specific shipper locations. Embargoes, which may be of varying duration, are quite common in the railroad industry and typically do not result in government intervention. They can be challenged, however, and in the rare case in which they are used improperly, a rail carrier may be liable for damages and/or injunction. Under its common carrier obligation, the embargoing railroad must restore safe and adequate service within a reasonable period of time to any line as to which it has not applied for abandonment authority. A service curtailment that extends beyond a reasonable time can be construed as an illegal abandonment if unaccompanied by an abandonment application or exemption request.

"The reasonableness of an embargo is determined by a balancing test, taking into consideration such factors as the length of the service cessation, the carrier's intent, the cost of repairs, the line's traffic volume and revenues, and the carrier's financial condition. The cost of repairs, relative to the volume of traffic on the line and the financial condition of the carrier, often is particularly important. Typically, an embargo is found to be invalid, or to constitute an unlawful abandonment, where the embargo is a long one and the cost of repairs is not substantial [citations omitted]."

*Accord*, Finance Docket No. 34236, *Bolen-Brunson-Bell Lumber Company, Inc. v. CSX Transportation, Inc.*, served May 15, 2003; Finance Docket No. 32821, *Bar Ale, Inc. v. California Northern Railroad Co. and Southern Pacific Transportation Company*, served July 20, 2001.

As was the Board's conclusion in the foregoing proceedings, GRYR's continuing embargo of the bridge at MP 656.4 is reasonable. GRYR filed its Petition for Exemption to obtain the Board's abandon authorization promptly after embargoing the bridge. Neither Mr. Riley nor the Mississippi Transportation Commission's consultant, C&S Engineers, Inc., offered an estimate of the cost of repairing the bridge. The only firm figure of record in the abandonment proceeding was that of GRYR's consultant, Landreth Engineering, that it would cost \$784,000 to replace the bridge. Unquestionably, GRYR had insufficient funds or the prospect of securing adequate revenues to replace the bridge. It did not even have the means for repairing the bridge, because it was operating the line sought to be abandoned at a loss. In his protest of October 5, 2011, in the abandonment proceeding, while disputing the GRYR's assertion of the net liquidation value of the line sought to be abandoned, Mr. Riley did not question GRYR's sworn testimony that GRYR lost \$109,927 operating the line in 2010 and \$94,674, the first six months of 2011. Mr. Tom O'Connor, the consultant whose unverified report was filed with the Mississippi Transportation Commission's October 27, 2011, protest in the abandonment proceeding,

similarly assailed GRYR's claimed net liquidation value. Mr. O'Connor contended that GRYR had understated local revenue because it hadn't handled more local shipments and overhead revenue because GRYR had not recognized and properly counted the overhead traffic. Mr. O'Connor, however, did not assail GRYR's calculation of its avoidable costs, but he nevertheless expressed his opinion that "the Grenada line could be profitable." As the Board observed in Docket No. AB-441 (Sub-No. 2X), *SWKR Operating Co.-- Abandonment Exemption -- in Cochise County, AZ*, served February 14, 1997, "A railroad cannot be required to continue operating a losing line based on mere hope of economic growth [citation omitted]."

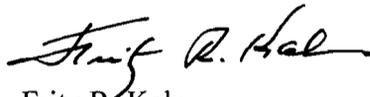
GRYR is mindful of its obligation, pursuant to 49 U.S.C. § 11101(a), to provide transportation or service on reasonable request. "A reasonable request is one that is specific as to the volume, commodity, and time of shipment." Finance Docket No. 34337, *Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc. v. North Coast Railroad Authority. d/b/a Northwestern Pacific Railroad*, served January 31, 2007. *Accord*, Finance Docket No. 34019, *Montezuma Grain Company, LLP and Parke County Redevelopment Commission v. CSX Transportation, Inc.*, served September 13, 2002. GRYR received no such reasonable request for transportation or service from any shipper between MP 625.6 and MP 703.8. As the Board noted in Finance Docket No. 42086, *Terminal Warehouse, Inc. v. CSX Transportation, Inc.*, served May 12, 2004, "[T]he record does not show that any shipper requested service from [the railroad] during the 2-year out-of-service period. Any inquiry about [the railroad's] duty to repair the Line would have to be predicated upon [the railroad's] having received a reasonable request for service."

The imposition of the embargo of the bridge at MP 656.4 and its continuation in the meantime were reasonable and call for neither the assessment of damages nor the entry of an injunction.

Respectfully submitted,

GRENADA RAILWAY, LLC

By its attorney,



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Dated: July 19, 2013

#### CERTIFICATE OF SERVICE

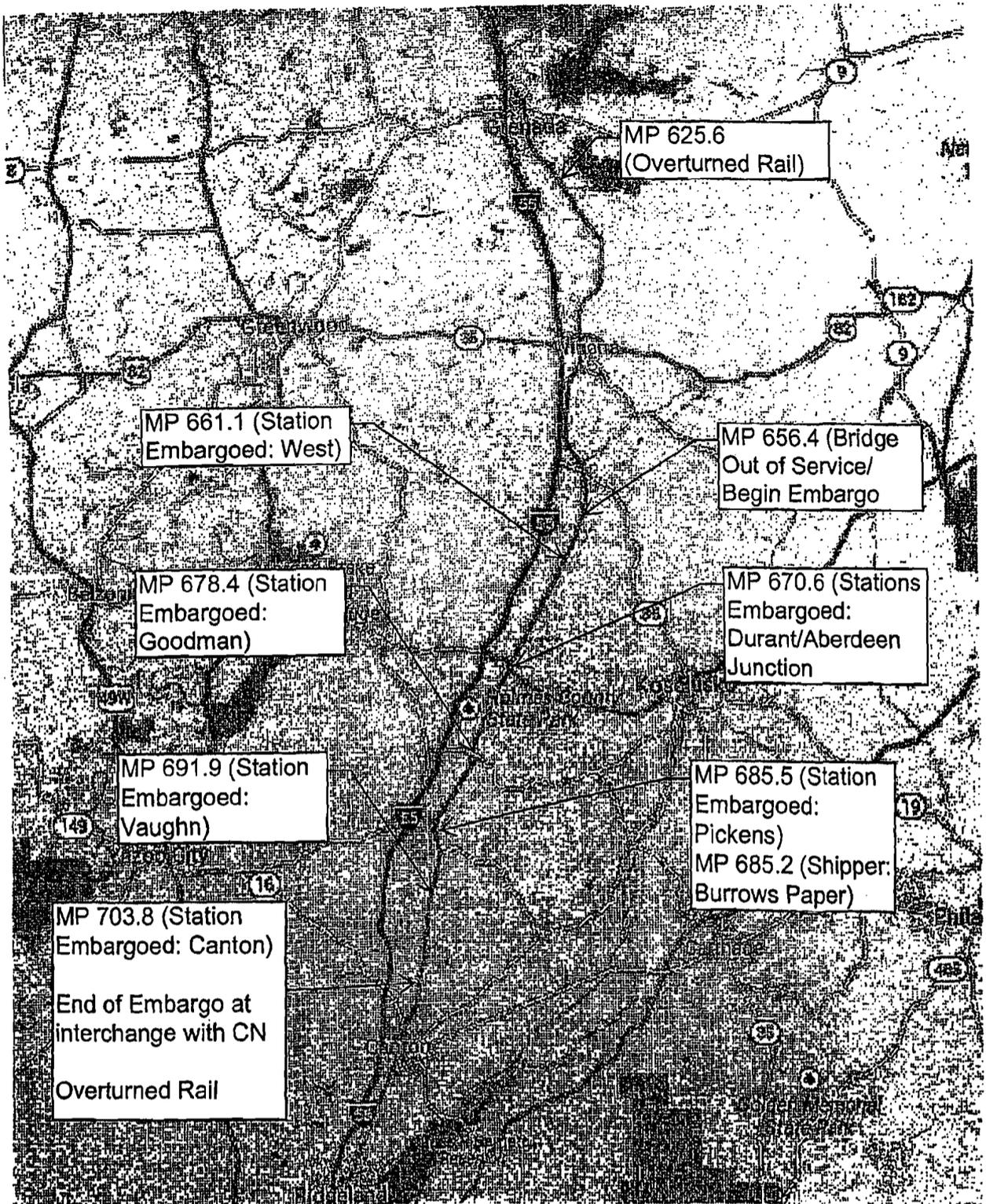
I certify that I this day have served each party of record by mailing a copy of the foregoing response to each of them by prepaid first-class mail.

Dated at Washington, DC, this 19th day of July 2013.



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Fritz R. Kahn



Grenada Railway, LLC