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BY HAND DELIVERY

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: Finance Docket No. 35848, Wisconsin & Southern Railroad,
L.L.C. – Acquisition and Operation Exemption – Union Pacific
Railroad Company

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Petition for
Exemption under 49 U.S.C. § 10502 and a check covering the
\$7,100 filing fee.

If you have any questions, please contact me.

Sincerely,

Karl Morell
Of Counsel

Enclosures



FILED
August 8, 2014
SURFACE
TRANSPORTATION BOARD

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FEE RECEIVED
August 8, 2014
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35848

WISCONSIN & SOUTHERN RAILROAD L.L.C.
--ACQUISITION AND OPERATION EXEMPTION--
UNION PACIFIC RAILROAD COMPANY

PETITION FOR EXEMPTION



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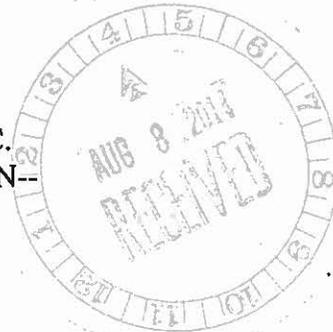
Dated: August 8, 2014

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--ACQUISITION AND OPERATION EXEMPTION--
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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 three rail lines currently owned by the Union Pacific Railroad Company (“UP”).

SUMMARY OF TRANSACTION

UP owns three rail lines totaling approximately 69.62 miles in the State of Wisconsin as follows: (1) the Reedsburg line located between milepost 134.0, near Madison, and milepost 191.90, near Reedsburg; (2) the Central Soya Industrial Lead located between milepost 83.78 and milepost 85.5¹; and (3) the Cottage Grove Industrial Lead, located between milepost 81.00 and milepost 71.00 (the “Rail Lines”). Wisconsin Department of Transportation (“WisDOT”) is acquiring the physical assets of the Rail Lines from UP. WisDOT will not assume any common

¹ The portion of the Central Soya Industrial Lead located between milepost 85.5 and milepost 89.5 that was leased by WSOR in 1996 was abandoned in 2005. See STB Docket No. AB-33 (Sub-No. 251X) *Union Pacific Railroad Company – Abandonment Exemption – in Dane County, WI* (not printed), served May 2, 2005; STB Docket No. AB-383 (Sub-No. 4X) *Wisconsin & Southern Railroad Company – Discontinuance of Service Exemption – in Dane County, WI* (not printed), served May 2, 2005.

carrier obligations to provide freight rail service on the Rail Lines. Rather, UP will retain the permanent exclusive easement for freight railroad purposes (the “Freight Easement”) and transfer the Freight Easement to WSOR. Once the Freight Easement is transferred to WSOR, WSOR will provide common carrier rail freight transportation over the Rail Lines pursuant to an operating agreement with the Wisconsin River Rail Transit Commission (“WRRTC”).

WSOR currently is the operator of the Rail Lines pursuant to a lease arrangement with UP. See STB Finance Docket No. 33139, *Wisconsin & Southern Railroad Co. – Lease and Operation – Union Pacific Railroad Company* (not printed), served October 30, 1996.

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); *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 Freight Easement over the Rail Lines 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 Rail Lines have been operated by WSOR since 1996. 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 Rail Lines are approximately 69.62 miles in length. 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).

Since WSOR is already the operator of the Rail Lines, 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 Rail Lines are currently operated by WSOR and WSOR intends to continue providing the same service along the Rail Lines as it does today. Consequently, the proposed transaction will not result in an abuse of market power. Rather, the proposed transaction will preserve the current competitive situation. 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 a 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. WSOR is currently the operator of the Rail Lines and no WSOR employee will be impacted by

the proposed transaction. Consequently, WSOR is seeking a waiver of the notice requirement set forth in Section 1121.4(h).

IV. Interchange Commitment.

The agreements between WSOR and UP and WSOR and WRRTC 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 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 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 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 requests that the Board exempt from the prior approval requirement of the proposed acquisition by WSOR of the Freight Easement over the Rail Lines.

Respectfully submitted,

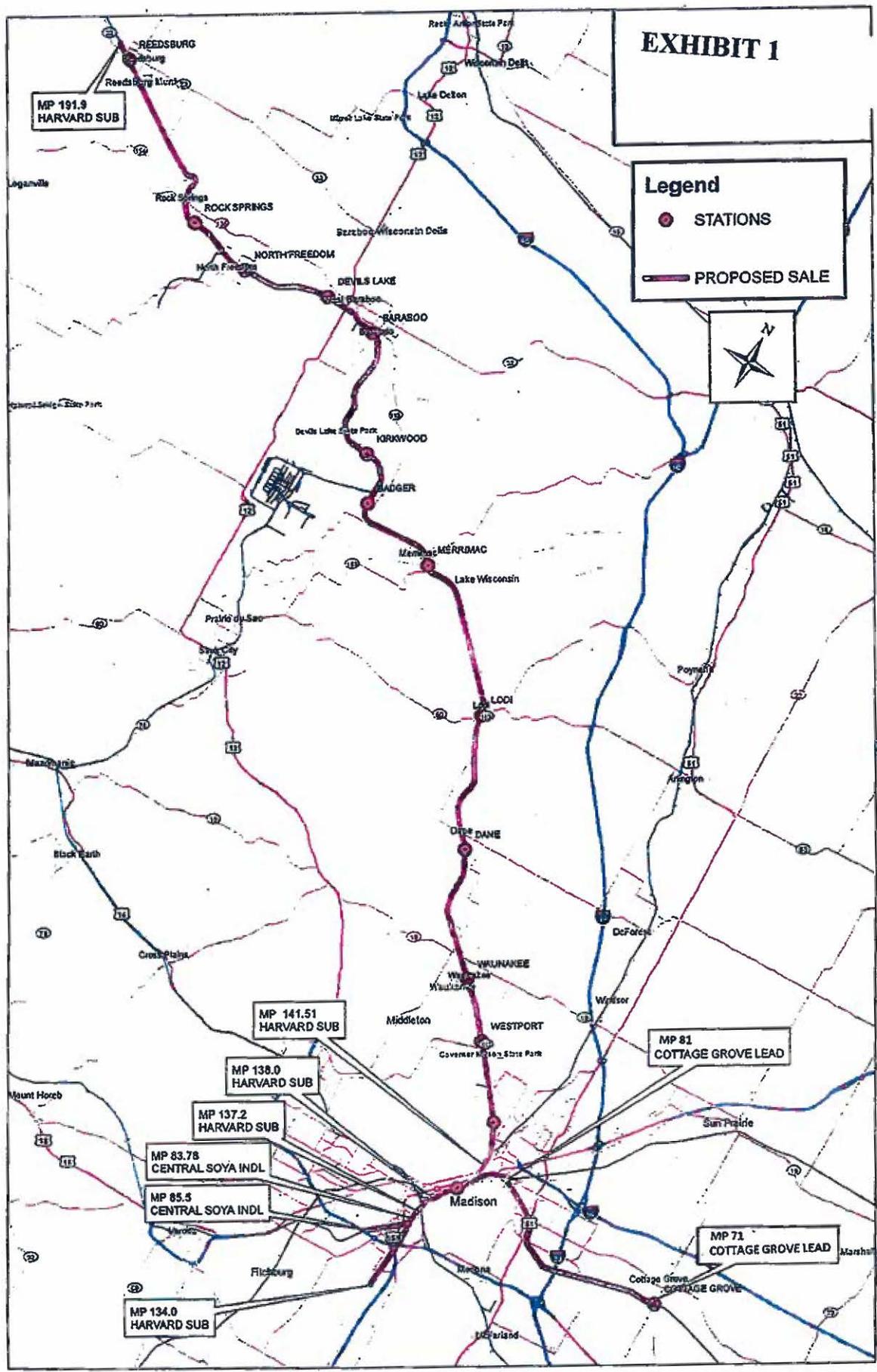
A handwritten signature in cursive script that reads "Karl Morell". The signature is written in black ink and is positioned above a horizontal line.

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Counsel for WISCONSIN & SOUTHERN RAILROAD COMPANY

Dated: August 8, 2014

EXHIBIT 1



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 8th 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