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MANAGEMENT
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May 23, 2012

232 355

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

FEE RECEIVED
MAY 23 2012
SURFACE
TRANSPORTATION BOARD

Re: Canadian National Railway Company – Abandonment Exemption – In Niagara County, NY (STB Docket No. AB-279 (Sub-No. 6X))

Dear Ms. Brown:

Enclosed please find an original and 10 copies of the Petition for Exemption for filing in the above-reverenced docket. Also enclosed are a CD containing the text of this filing in Microsoft Word and PDF formats and a check for the filing fee of \$6,300, as required under 49 C.F.R. § 1002.2(f)(21)(iii).

Very truly yours,


David A. Hirsh

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Enclosures

FILED

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STB

EXPEDITED HANDLING REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

232 355

STB Docket No. AB-279 (Sub-No. 6X)

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CANADIAN NATIONAL RAILWAY COMPANY
- ABANDONMENT EXEMPTION -
IN NIAGARA COUNTY, NEW YORK

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Office of Proceedings

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Part of
Public Record

PETITION FOR EXEMPTION

FILE RECEIVED
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SURFACE
TRANSPORTATION BOARD

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Counsel for Canadian National Railway Company

May 23, 2012

EXPEDITED HANDLING REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-279 (Sub-No. 6X)

CANADIAN NATIONAL RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN NIAGARA COUNTY, NEW YORK

PETITION FOR EXEMPTION

Canadian National Railway Company (“Petitioner” or “CNR”) hereby petitions the Surface Transportation Board (the “Board”), pursuant to 49 U.S.C. § 10502(a), 49 C.F.R. Part 1121, and 49 C.F.R. Part 1152, Subpart G, for an exemption from the approval requirements of 49 U.S.C. § 10903 with regard to CNR’s proposed abandonment of the entire U.S. portion of its Grimsby Subdivision, between approximately Milepost 0.20 and approximately Milepost 0.35, in the City of Niagara Falls, Niagara County, New York (the “Line”).¹ CNR also requests exemption from the provisions of 49 U.S.C. § 10904 regarding offers of financial assistance (“OFAs”) and of 49 U.S.C. § 10905 regarding sale for public purposes.

In addition, CNR requests expedited handling of this petition in order that federal funding for the proposed Niagara Falls International Railway Station and Intermodal

¹ CNR’s Grimsby Subdivision lies partly in Canada and partly in the United States. The U.S. portion of the Subdivision is one of only a few CNR segments that extend briefly into the United States and that are owned and operated by CNR, rather than by one of CNR’s U.S. operating affiliates.

Transportation Center (which funding, as explained below, is dependent on abandonment of the Line) may be released in time to permit construction during the 2012 construction season. CN recently learned that funding for this important public project could be endangered if abandonment is delayed.

The greater part of the Line (approximately 0.10 miles) lies on the upper deck of the U.S. portion of Whirlpool Rapids Bridge (the "Bridge"), an international rail/highway bridge which crosses the Niagara River between Niagara Falls, New York, and Niagara Falls, Ontario, and is owned by the bi-national Niagara Falls Bridge Commission ("NFBC"). The Line also includes approximately 0.05 miles of single track in Niagara Falls, New York, between the eastern end of the Bridge and the beginning of the Niagara Branch of CSX Transportation, Inc. ("CSXT").² The Line lies entirely within the United States Postal Service's 14305 ZIP Code. Maps of the Line, which together meet the requirements of 49 C.F.R. § 1152.22(a)(4), are provided as Exhibit 1.

To the best of CNR's knowledge, the line does not contain any federally granted right-of-way. NFBC and the City of Niagara Falls, owners of the right-of-way between the Bridge and Whirlpool Street and east of Whirlpool Street, respectively, have informed CNR that it is unaware of any federally granted right-of-way, and CNR itself has no documentation indicating that the Line includes any such federally granted property.

Formal regulation of the proposed abandonment is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101. There has been no regularly scheduled

² CNR understands that NFBC owns the right-of-way between the eastern end of the Bridge and Whirlpool Street, and that the City of Niagara Falls owns the railroad overpass crossing Whirlpool Street. CNR is seeking authority to abandon, rather than merely to discontinue service over the Line, because, to the best of CNR's knowledge, it is the only entity with a common carrier obligation with respect to the Line.

freight service over the Line since 2004, and no freight movements of any kind for at least five years. In addition, there are no shippers located on the Line. Therefore, formal regulation of the abandonment is unnecessary to protect shippers from the abuse of market power. Further, the abandonment is of limited scope, as it would affect only 0.15 miles of track. Accordingly, 49 U.S.C. § 10502(a) calls for exemption of the abandonment from 49 U.S.C. § 10903 and related regulations.

In addition, the Board should exempt the proposed abandonment from the requirements of 49 U.S.C. §§ 10904 and 10905. It is expected that the Line will be used for the public purpose of continued rail passenger service following abandonment, and there is no overriding public need for continued freight rail service over the Line.

A draft Federal Register notice, as required by 49 C.F.R. § 1152.60(c), is attached as Exhibit 2. Pursuant to 49 C.F.R. § 1105.12, notice of the proposed abandonment was published on May 9, 2012, in the Niagara Gazette, a newspaper of general circulation in Niagara Falls, New York. A copy of the notice is attached to the certification provided as Exhibit 3.

The factual assertions contained in this petition are verified by Paul E. Ladue, CNR's Region Director Contracts and Administration, Southern Region.

FACTUAL BACKGROUND

The Bridge, which is owned by NFBC,³ is an international rail/highway bridge across the Niagara River, connecting Niagara Falls, New York, and Niagara Falls,

³ NFBC is a bi-national authority, with equal U.S. and Canadian representation, created in 1938 by the United States Congress (Joint Resolution of June 16, 1938, ch.

Ontario. It was constructed between 1896 and 1897, replacing an earlier bridge on the site.

The Bridge has two decks. The lower deck is used exclusively for passenger motor vehicles. The upper deck is used exclusively for rail traffic and is leased to CNR, pursuant to agreements entered into between 1853 and 1919 by the predecessors of CNR and NFBC. Approximately 0.10 miles of the Line consists of that portion of CNR's single track which lies on the U.S. side of the Bridge. The remaining 0.05 miles of the Line consists of CNR's single-track approach to the eastern (U.S.) end of the Bridge. Part of this approach lies on land owned by NFBC, part lies on the City of Niagara Falls's railroad overpass over Whirlpool Street, and part lies on land, which CNR understands is owned by the City of Niagara Falls, between Whirlpool Street and CSXT's Niagara Branch.

To the best of CNR's knowledge, no rail customer has ever been located on or directly served by the Line, and there is no reasonable possibility for the development of new rail traffic on the Line, given its location and short length. CNR formerly used the Line for overhead traffic, as one of several available routes over the international border between Canada and the United States. CNR long ago determined that other routes are more efficient for CNR's operations, and has not moved any freight trains over the Line in over five years. Even though CNR does not now use the Bridge, it is required by its lease to maintain the upper deck of the Bridge and to make annual fixed lease payments to NFBC.

490, 52 Stat. 767). It owns and manages the Bridge and two other border crossings between New York and Ontario.

The National Railroad Passenger Corporation (“Amtrak”) currently uses the Line for its Maple Leaf passenger rail service, which it operates once a day in each direction, in conjunction with VIA Rail Canada (“VIA”), between New York City and Toronto, via Albany, Syracuse, Buffalo, and Niagara Falls. Amtrak, however, does not have an agreement with either CNR or NFBC for use of the Line, and neither CNR nor NFBC receives any compensation for that use. CNR understands that NFBC has reached agreements in principle with Amtrak and VIA that would allow Amtrak and VIA to use the rail deck of the Bridge and the right-of-way adjacent to the eastern end of the Bridge for continued passenger service after consummation of CNR’s proposed abandonment of the Line.⁴ In addition, CNR is working to finalize agreements with NFBC and Amtrak, under which CNR’s lease of the upper deck of the Bridge would terminate and CNR would convey all its legally transferrable interest in the Line, including any transferrable interest in the rail, bridge ties, and other track materials, to Amtrak for a nominal price for the purpose of continued rail passenger operations.⁵ But before the parties consummate those agreements, CN must obtain regulatory authority to extinguish its

⁴ The City of Niagara Falls is promoting the use of the Line for continued passenger service. The City is an active participant in plans for development of the Niagara Falls International Railway Station and Intermodal Transportation Center, to be constructed in the vicinity of the Line. As noted in the City’s letter of support for the proposed abandonment, this project would include a consolidated railroad intermodal facility that would include Amtrak’s new Niagara Falls Station. *See* Letter from Thomas J. DeSantis, AICP (Senior Planner, Div. of Planning & Env’tl. Servs., Dep’t of Planning & Econ. Dev., City of Niagara Falls) to Cynthia Brown (Chief, Section of Admin., Office of Proceedings, Surface Transp. Bd.) (May 10, 2012) (“City of N.F. Letter”) (attached hereto as Exhibit 4). The City therefore can reasonably be expected to make its property available as needed for continued passenger service.

⁵ If CNR is unable to execute an agreement with Amtrak for transfer of its interest in the Line for a nominal price, it would be willing to enter such an agreement with an alternative operator.

common carrier obligation with respect to the Line and ensure that neither Amtrak nor NFBC assumes that obligation.⁶

DISCUSSION

I. THE PROPOSED ABANDONMENT SHOULD BE EXEMPTED FROM 49 U.S.C. § 10903

Under 49 U.S.C. § 10903, a rail carrier may not abandon or discontinue service over one of its rail lines without prior approval from the Board. The Board, however, is directed to exempt a proposed transaction from regulation under a provision of 49 U.S.C. §§ 10101-11908 whenever it finds that (1) application of that provision is not necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101 (“RTP”); and (2) either (a) the transaction is of limited scope, or (b) application in whole or in part of the provision is not necessary to protect shippers from the abuse of market power. 49 U.S.C. § 10502(a). Because the proposed abandonment is fully consistent with the RTP, is limited in scope, and would not lead to an increase in market power that could allow the abuse of shippers, the Board should exempt that abandonment from the approval requirements of 49 U.S.C. §§ 10903.

⁶ CNR initiated proceedings under the Canada Transportation Act for discontinuance of operations on its track on the Canadian side of the Bridge, but after doing so reached an agreement in principle with VIA under which CNR would convey to VIA any transferrable interest it may have in the rail and track materials on the Canadian portion. CNR expects the parties to execute that agreement in the near future so that rail passenger service may continue. Unlike the analogous situation under U.S. law, once such an agreement is executed, Canadian law requires no further regulatory authority for CNR to discontinue operations.

A. Regulation Is Not Necessary to Carry Out the RTP

Detailed scrutiny of CNR's proposed abandonment of the Line under 49 U.S.C. § 10903 is not necessary to carry out the RTP. The Line is not currently used for rail freight service, there is no reasonable prospect that it will be needed for such service in the future, and abandonment of the Line would permit CNR to eliminate costly maintenance and repair obligations from which it derives no benefit. Accordingly, exempting the abandonment would further the RTP by:

- minimizing the need for federal regulatory control over the rail transportation system;
- helping to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;
- fostering sound economic conditions in transportation;
- reducing regulatory barriers to exit;
- providing for the expeditious handling and resolution of proceedings required or permitted to be brought before the Board.

49 U.S.C. § 10101(2), (4), (5), (7), and (15). Moreover, granting the requested exemption would not be adverse to the remaining elements of the RTP, including any such elements that arguably relate to continued Amtrak service on the line. CNR is willing to sell to Amtrak, for nominal compensation, all its legally transferable interest in the Line, and CNR understands that NFBC is willing to negotiate an agreement with Amtrak that would provide Amtrak with rights to continued use of the Line for passenger service. Moreover, as explained in the City of N.F. Letter, granting this Petition expeditiously would help facilitate continued passenger operations.

B. The Proposed Abandonment Is of Limited Scope

In determining whether a proposed abandonment is of limited scope, the Board considers such factors as the length of the rail line, the number of shippers on the line, and the traffic volume. *See, e.g., Tulare Valley R.R. – Abandonment Exemption – In Tulare & Fresno Counties, CA*, Docket No. AB-397 (Sub-No. 3X), slip op. at 4 (ICC served Feb. 9, 1995) (“*Tulare*”); *Burlington N. R.R. – Abandonment Exemption – In Greene & Polk Counties, MO*, Docket No. AB-6 (Sub-No. 349X), slip op. at 2 (ICC served Aug. 27, 1993) (“*BN*”); *Fla. W. Coast R.R. – Abandonment Exemption – Gilchrist & Levy Counties, FL*, Docket No. AB-247 (Sub-No. 1X), slip op. at 2 (ICC served Jan. 16, 1992) (“*FWC*”). The Line at issue here is only 0.15 miles long, or much shorter than many rail lines whose abandonments have been found to be of limited scope.⁷ In addition, there are no shippers located on the Line, no freight traffic moves over the Line, and the Line would remain available for passenger service. Under these circumstances, the proposed abandonment is clearly of limited scope.

⁷ *E.g., Land Conservancy of Seattle and King County – Acquisition & Operation Exemption – Burlington N. & S.F. Ry.*, STB Finance Docket No. 33389, slip op. at 12-13 (STB served May 18, 1998) (abandonment of 12.45-mile line); *Bay Line R.R. – Abandonment Exemption – In Jackson & Holmes Counties, FL*, Docket No. AB-454X (STB served May 14, 1996) (9.19-mile line); *CSX Transp., Inc. – Abandonment Exemption – In Bell County, KY*, Docket No. AB-55 (Sub-No. 517X) (STB served Apr. 16, 1996) (5.22-mile line); *Burlington N. R.R. – Abandonment Exemption – Between Mesa & Basin City, Franklin County, WA*, Docket No. AB-6 (Sub-No. 370X) (STB served Feb. 29, 1996) (11.20-mile line); *Tulare* (16-mile, 11.3-mile, 19.0-mile, and 9.4-mile lines); *BN* (30.40-mile line); *Tex. N.W Ry. – Abandonment & Discontinuance of Service Exemption – Hansford & Hutchinson Counties TX; Texas County, OK; and Seward County, KS*, ICC Docket No. AB-281X, slip op. at 3 (ICC served Aug. 19, 1987) (56-mile line).

C. Regulation Is Not Necessary to Protect Shippers from Market Power Abuse

Because the proposed abandonment is of limited scope, CNR does not need to show that regulation is unnecessary to protect shippers from an abuse of market power. Nonetheless, it is clear that the abandonment would have no such effects. There are no shippers on the Line, and no overhead freight traffic moves over the Line, so abandonment would not affect the competitive or routing options of any shipper. *See BNSF Ry. – Abandonment Exemption – In Stearns County, Minn., Docket No. AB 6 (Sub-No. 472X), slip op. at 3 (STB served May 20, 2011) (no active shippers on line; regulation of the proposed abandonment therefore not necessary to protect shippers from abuse of market power); Ind. S.W. Ry. – Abandonment Exemption – In Posey & Vanderburgh Counties, Ind., STB Docket No. AB 1065X, slip op. at 7 (STB served Apr. 8, 2011) (regulation of abandonment not necessary to protect shippers from abuse of market power, where no local traffic had moved over line for at least two years).*

II. THE PROPOSED ABANDONMENT SHOULD BE EXEMPTED FROM 49 U.S.C. §§ 10904-10905

Under its precedents, the Board may exempt a proposed abandonment from the OFA requirements of 49 U.S.C. § 10904 “when the record shows that the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.” *BNSF Ry. – Abandonment Exemption – In Los Angeles County, Cal., Docket No. AB 6 (Sub-No. 477X), slip op. at 6 & n.10 (STB served Sept. 16, 2011) (citing cases).* This is such a case. As discussed above, CNR has an agreement in principle with VIA, and is working to finalize agreements with NFBC and Amtrak, all for the purpose

of maintaining rail passenger service over the Line.⁸ Passenger rail service has been recognized as a “public purpose,” *see id.* at 7, and it is apparent that the Line, which serves no shippers and over which no freight trains have moved for over five years, is not needed for continued rail service. Accordingly, CNR requests that the Board exempt the proposed abandonment from the OFA requirements of 49 U.S.C. § 10904.

In addition, because it is already CNR’s intention to transfer its interests in the Line for continued use for the public purpose of rail passenger service, and because there is evidently no other public use under 49 U.S.C. § 10905 for which the right-of-way of the Line would be suitable,⁹ it would not be appropriate to subject the abandonment to the public use procedures of that section. As explained above, the rail properties involved in the proposed abandonment are currently being used by Amtrak, in conjunction with VIA, for passenger service, and CNR expects to finalize agreements with NFBC, VIA, and Amtrak that would permit continuation of the current service.¹⁰ Furthermore, CNR understands that NFBC (the owner of the Bridge and the land on which the track immediately to the east of the Bridge lies) has reached an agreement in principle with

⁸ The possibility that rail freight transportation might be reintroduced over the Line pursuant to an OFA, or even that the Line might continue to be subject to a freight common carrier obligation, would significantly complicate or defeat the efforts of the parties to finalize the transfer of the Line and other arrangements necessary for the preservation of passenger rail service.

⁹ Given that there are pedestrian walkways on the lower level of the Bridge, and that the short portion of the Line (approximately 250 feet) to the east of the Bridge is in an urban area adjacent to city streets, CNR believes that state or local parties will have no interest in potential recreational trails use of the Line, and CNR is unaware of any alternative public use, other than as planned for passenger rail service.

¹⁰ If CNR is ultimately unable to reach agreement with Amtrak regarding transfer of its interest in the Line for continued rail passenger service, it would be willing to transfer that interest, for nominal compensation, to an alternative rail passenger operator.

Amtrak and VIA that would permit continued passenger operations.¹¹ CNR therefore requests that the Board exempt the proposed abandonment from the public use procedures of 49 U.S.C. § 10905.

III. OTHER MATTERS

A. Environmental and Historic Matters

CNR filed a combined environmental and historic report with the Board on May 2, 2012. This report was simultaneously served on various agencies and officials, as required by the Board's environmental and historic rules. *See* 49 C.F.R. §§ 1105.7(b), 1105.8(c). It is the conclusion of this report that the proposed abandonment would not significantly affect either the quality of the human environment or the conservation of energy resources and that it would have no adverse effect on any properties listed or eligible for listing on the National Register of Historic Places.

B. Labor Protection

The proposed abandonment is subject to the standard labor protective conditions in *Oregon Short Line R.R. – Abandonment – Goshen*, 360 I.C.C. 91 (1979), which would adequately protect the interests of adversely affected railroad employees, if any.

¹¹ In addition, the City of Niagara Falls supports continuation of passenger service, *see* City of N.F. Letter at 1, and can therefore be expected to negotiate an agreement with Amtrak, insofar as its agreement may be necessary for such service.

C. Expedited Handling

As noted above and in Exhibit 4, the City of Niagara Falls is developing a new Niagara Falls International Railway Station and Intermodal Transportation Center in the vicinity of the Line. In its letter of support for the abandonment, the City explains that it has been awarded a grant of \$16.5 million through the U.S. Department of Transportation's TIGER (Transportation Investment Generating Economic Recovery) program for the completion of the Transportation Center, but those funds are unlikely to be released until CNR has abandoned the Line. If the abandonment is not consummated expeditiously, then the funds may be released too late to be used for construction during the 2012 construction season, in which case construction costs may be higher than planned and may exceed the available funding. City of N.F. Letter at 2. Accordingly, in order to ensure that the funded construction may begin during the 2012 season, CNR respectfully requests that the Board expedite its handling of this petition, and allow any decision granting the requested exemption to take effect as soon as possible.

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 to the abandonment of the Line is not required to carry out the RTP, the proposed transaction is of limited scope, and regulation is not required to protect shippers from an abuse of market power. Accordingly, the Board should grant CNR's petition for exemption. Further, as the record in this case shows that the right-of-way is needed for a valid public purpose and that there is no overriding public need for continued freight rail service, the Board should exempt the proposed abandonment from the OFA and public

use requirements of 49 U.S.C. §§ 10904 and 10905. Finally, CNR requests expeditious handling of this petition in order to facilitate the timely release of federal funds for the completion of Amtrak's new train station, which funding could be endangered if the requested abandonment is delayed.

Respectfully submitted,



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James M. Guinivan
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(202) 973-7600

Counsel for Canadian National Railway Company

May 23, 2012

VERIFICATION

I, Paul E. Ladue, declare under penalty of perjury that that the foregoing facts are true and correct. Further, I certify that I am qualified and authorized to verify this Petition for Exemption.


Paul E. Ladue

Executed on May 23, 2012

EXHIBIT 1

MAPS

Exhibit 1 consists of two maps. Map 1 is based on the United States Geological Survey topographic map for the Niagara Falls Quadrangle and indicates the general location of the Line. Map 2 is based on an aerial photograph of the Line and is sufficiently detailed to show buildings and other structures in the vicinity of the proposed action. Together, the two maps show the Line in its relation to other rail lines in the area, highways, water routes, and population centers.

Exhibit 1 - Map 1

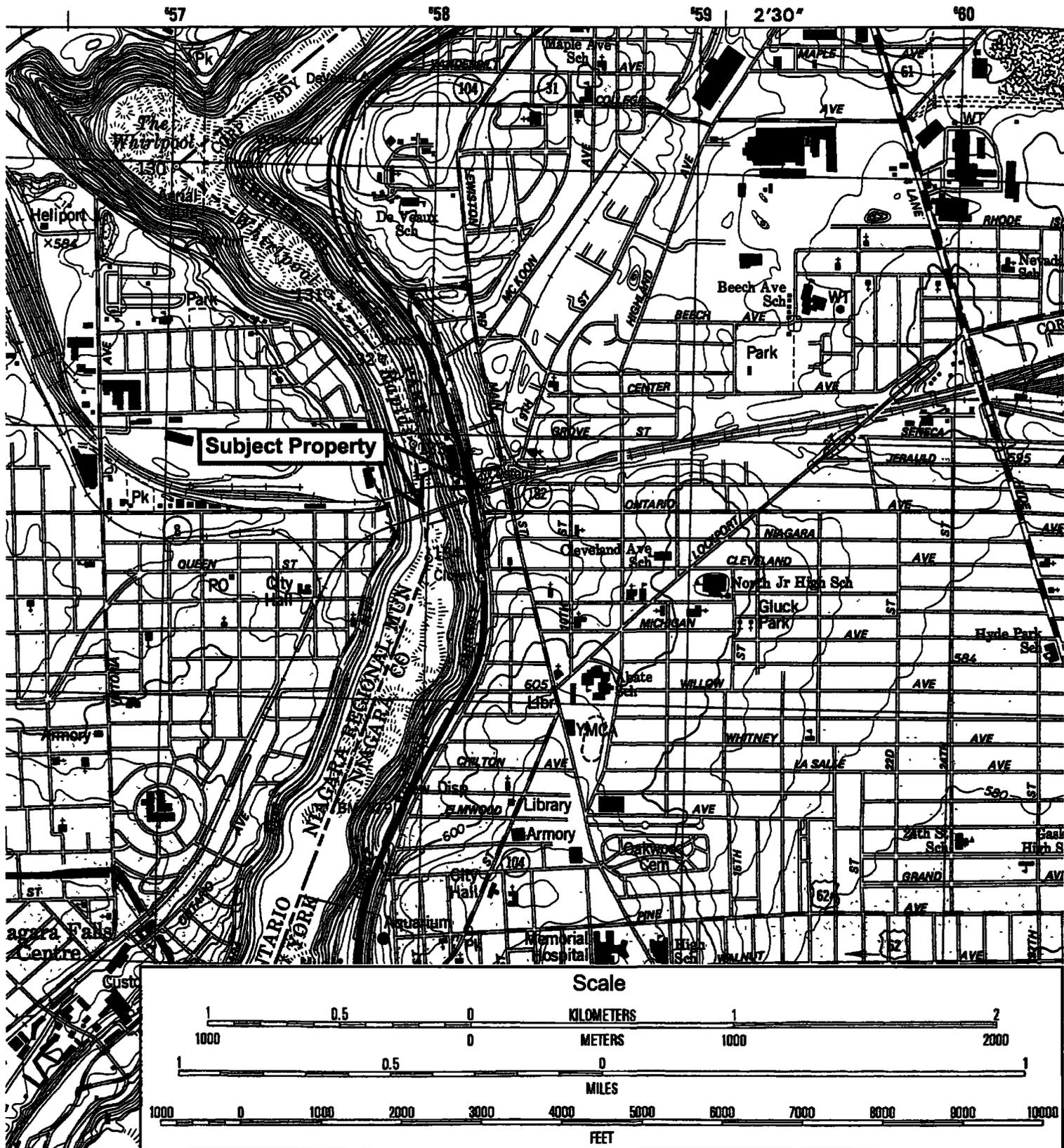
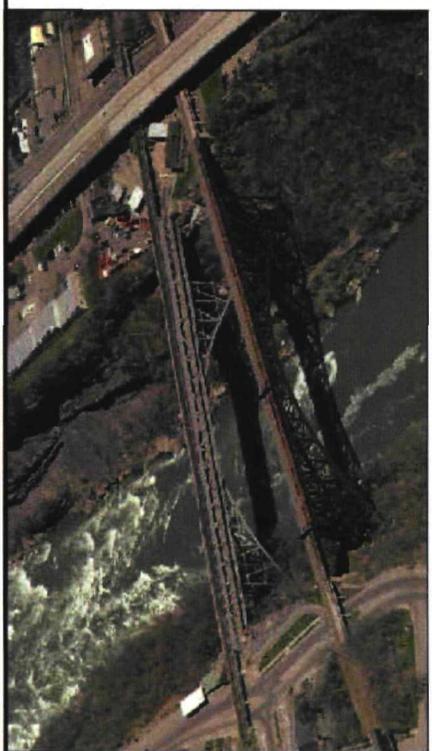
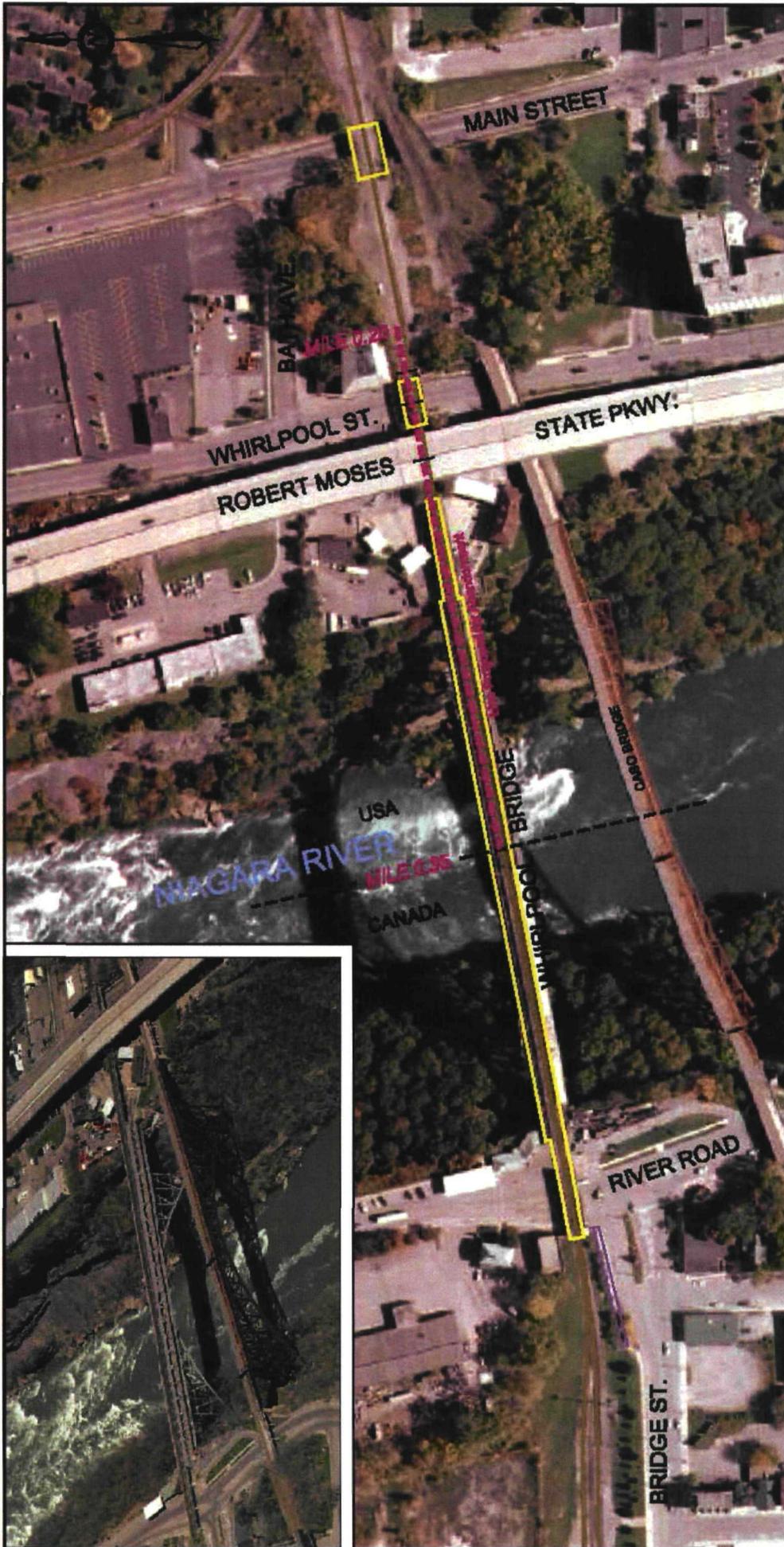


Exhibit 1 - Map 2



DESCRIPTION:	PROPERTY SKETCH		
<p>THIS IS NOT A PLAN OF SURVEY / CADD INVEST PWS UBI PLAN ENFORCEMENT</p>			
SUBDIVISION:		Grimsby (333)	
SPUR / ANTENNE:		N/A	
MILEAGE / MILLAIRE:		As Shown	
DATE:		April 16, 2012	
SCALE / ÉCHELLE:		1:2000	



EXHIBIT 2

DRAFT FEDERAL REGISTER NOTICE

7

STB No. AB-279 (Sub-No. 6X)

Notice of Petition for Exemption to Abandon

On May 23, 2012, Canadian National Railway Company (CNR) filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the abandonment of a line of railroad extending from approximately railroad milepost 0.35 (on the U.S.-Canada border, near Niagara Falls station, in Niagara Falls, Ontario, Canada) to the end of CNR's Grimsby Subdivision, at approximately railroad milepost 0.20 (near Bridge station, in Niagara Falls, New York), which traverses through the 14309 United States Postal Service ZIP Codes, a distance of approximately 0.15 miles, in Niagara County, New York. The line for which the abandonment exemption request was filed does not include any CNR rail stations. .

To the best of CNR's knowledge, 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 interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R.R. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

All interested persons 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 and any request for trail use/rail banking will be due no later than 20 days after notice of the filing of the petition for exemption is published in the Federal Register.

Persons seeking further information concerning abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis.

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 made 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.

EXHIBIT 3

CERTIFICATE OF PUBLICATION

STATE OF NEW YORK
NIAGARA COUNTY, } SS, _____

Linda Elliott, of said county, being duly sworn, deposes and says that she is now and during the whole time hereinafter mentioned was the Clerk of

NIAGARA GAZETTE

A newspaper published in the County and State aforesaid, and that the annexed printed legal # 23180 was printed and published in said paper on the following dates:

05/09/2012

Linda Elliott

Principal Clerk

Subscribed and sworn to before me this

9 May 2012

Patricia J King

PJ King

07/27/2014

PATRICIA J. KING
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires ~~March 30, 2014~~

Notary Public

Expiration Date

**Notice of Intent To Abandon or
To Discontinue Rail Service**

Canadian National Railway Company (CNR) gives notice that on or about May 22, 2012, it intends to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, et seq., permitting the abandonment of a 0.15-mile line of railroad between the beginning of CNR's track at approximately railroad milepost 0.20, near Niagara Falls, New York, and the international border at approximately railroad milepost 0.35, near Niagara Falls, New York, which line traverses through United States Postal Service ZIP Code 14305 in Niagara County, New York. The proceeding has been docketed as No. AB-279 (Sub-No. 6X).

The Board's Office of Environmental Analysis (OEA) will generally prepare an Environmental Assessment (EA), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to OEA, Surface Transportation Board, Washington, DC 20423 or by calling SEA at 202-245-0295.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, SW., Washington, DC 204230001 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on petitioner's representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on the petitioner's representative: David A. Hirsh, Harkins Cunningham LLP, 1700 K Street, N.W., Suite 400, Washington, DC 20006-3804 (202-973-7600).

#N23180

5/9/2012

EXHIBIT 4

**LETTER OF CITY OF NIAGARA FALLS
IN SUPPORT OF ABANDONMENT**



City of Niagara Falls, New York

P.O. Box 69, Niagara Falls, NY 14302-0069

DEPARTMENT OF PLANNING & ECONOMIC DEVELOPMENT
Division of Planning & Environmental Services
Office of Planning

May 10, 2012

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

RE: Canadian National Railway Co.— Abandonment Exemption—
In Niagara County, NY, (STB Docket No. AB-279 (Sub-No. 6X))

Dear Ms. Brown:

As Senior Planner of the City of Niagara Falls, New York ("Niagara Falls" or the "City"), I am writing on behalf of Mayor Paul A. Dyster to inform the Board that the City supports the proposed abandonment by Canadian National Railway Company ("CN") of its line on the U.S. portion of the Whirlpool Rapids Bridge and adjacent track in Niagara Falls, NY (the "Line").

Amtrak operates two trains that serve Niagara Falls. In cooperation with VIA Rail Canada, Amtrak operates its "Maple Leaf" service once a day in each direction between New York City and Toronto, via Albany, Syracuse, Buffalo, and Niagara Falls. The Maple Leaf uses the Line to pass over the Whirlpool Rapids Bridge to and from the City's sister city, Niagara Falls, Ontario. In addition, Amtrak's Empire Service runs twice a day in each direction between New York City and Niagara Falls via Albany, Syracuse, and Buffalo. The City anticipates increased rail passenger service to and through Niagara Falls, including increased international service between New York State and the Province of Ontario.

CN's proposed abandonment would advance the City's plans for the encouragement of passenger rail service. CN has offered to transfer all of its physical facilities and other interests in the Line to Amtrak or to another party, at nominal cost, upon abandonment for the purpose of continuing rail passenger operations, thus turning the Line into a facility dedicated exclusively to passenger service.

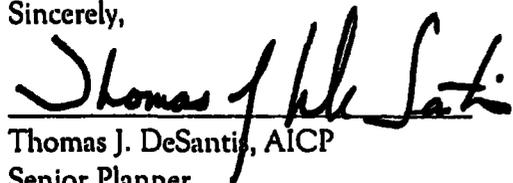
In addition, abandonment is an important step in development of the new Niagara Falls International Railway Station and Intermodal Transportation Center, which the City, together with the New York State Department of Transportation, is developing on Bath Avenue, in the vicinity of the Line. The Transportation Center project calls for renovation and restoration of the

old U.S. Custom House on Whirlpool Street, located immediately to the north of the Line and establishment of a consolidated railroad intermodal facility adjacent to the Whirlpool Rapids Bridge Plaza and North Main Street, which would incorporate the old Custom House building. This facility would include U.S. Customs Border Protection inspection facilities and Amtrak's new Niagara Falls Station, which would be where the Maple Leaf and Empire Service trains would stop, replacing the "temporary" station now located in a former freight house at Lockport Road.¹ The City has been awarded a grant of \$16.5 million, through the U.S. Department of Transportation's TIGER (Transportation Investment Generating Economic Recovery) program, for the completion of this project, and those funds are likely to be released only after CN has commenced its abandonment of the Line. Unless CN does so promptly, federal funding intended for construction may be released too late for the City to begin work before the end of the 2012 construction season. In that event, construction costs could be higher than planned and exceed the available funding. For these reasons, prompt completion of the Surface Transportation Board's abandonment proceedings is of utmost importance to the City.

Accordingly, Niagara Falls supports CN's proposed abandonment and respectfully requests the Surface Transportation Board to complete its environmental review process expeditiously, and to grant CN's petition for exemption.²

Do not hesitate to contact the undersigned should you have questions, at 716-286-4477, or via e-mail at DeSantis@nfez.org

Sincerely,



Thomas J. DeSantis, AICP
Senior Planner

cc: Victoria Rutson, Chief, Section of Environmental Analysis
Thomas O'Donnell, Deputy, Corporation Counsel (CNF)
Paul A. Dyster, Mayor, City of Niagara Falls, NY

¹ CN's planned abandonment and sale of the Line would also facilitate plans of Amtrak and CSX Transportation, Inc. ("CSXT") to reconfigure CSXT's track adjacent to the site of the new Amtrak station, as the Line (which connects to the CSXT track) would no longer be part of the national freight rail system, and CSXT would not be required to coordinate its work with CN.

² On June 28, 2011, in connection with environmental consultation regarding the proposed abandonment, the City's Department of Law wrote a letter to CN's counsel, suggesting that the abandonment could cause environmental and economic dislocation and jeopardize passenger service between Niagara Falls and Niagara Falls, Ontario. Subsequent consultations with CN have reassured the City that the abandonment, far from jeopardizing that service, would be consistent with it and that it should not result in any adverse environmental effects.

CERTIFICATE OF SERVICE

This is to certify that I have, this 23d day of May, 2012, served the preceding
Petition for Exemption on the following by mailing each a copy, first-class postage
prepaid:

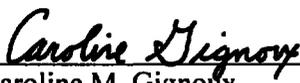
New York State Department of Public Service
3 Empire State Plaza
Albany, NY 12223-1350

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

Chief, Conservation and Outdoor Recreation Division
Rivers, Trails and Conservation Program
National Park Service
U.S. Department of the Interior
1849 C Street, N.W. (Org Code 2220)
Washington, DC 20240

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

Edgar Courtemanch, Esquire
Jared I. Roberts, Esquire
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, DC 20002



Caroline M. Gignoux