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September 12, 2016

**VIA ELECTRONIC FILING**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20423-0001

Re: **Docket No. AB-6 (Sub-No. 467X)**  
**BNSF Railway Company -- Discontinuance of Trackage**  
**Rights Exemption -- In Big Stone, Swift, Chippewa,**  
**Yellow Medicine and Renville Counties, Minn.**

Dear Ms. Brown:

Pursuant to the notice served in the above-captioned proceeding on August 24, 2016, Twin Cities & Western Railroad Company ("TC&W") hereby files these comments on the pending petition for exemption of BNSF Railway Company ("BNSF"). TC&W does not oppose the operative relief sought by BNSF. TC&W wishes to clarify, however, the record on which that relief will be granted.

BNSF seeks to discontinue dormant trackage rights obtained by Burlington Northern Railroad Company ("BN"), a BNSF predecessor, over a 106.7-mile rail line between Buffalo Lake and Ortonville, Minnesota that, according to BNSF's petition, is now owned by TC&W. TC&W does own the portion of the line between Buffalo Lake and Appleton, Minnesota. But TC&W does not own the Appleton-Ortonville segment; BNSF does. When BN acquired the Buffalo Lake-Ortonville trackage rights in 1983, the entire line was owned by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company ("MILW"), a predecessor of Soo Line Railroad Company ("Soo"). *See Burlington Northern Railroad Company -- Trackage Rights Exemption -- Between Ortonville and Buffalo Lake, MN*, Docket No. FD 30191 (ICC served June 23, 1983). TC&W purchased the line through Buffalo Lake to milepost 578.93 in Appleton from Soo in 1991. *Twin Cities & Western Railroad Company -- Acquisition and Operation Exemption -- Soo Line Railroad Company*, Docket No. FD 31912 (ICC served August 14, 1991).<sup>1</sup> BN acquired the line from milepost 578.93 in Appleton to milepost 600.7 in

<sup>1</sup> That transaction included TC&W's acquisition of certain incidental local/joint and overhead trackage rights over Soo's line from Appleton to Ortonville and beyond to Milbank, South Dakota.

# FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown  
September 12, 2016  
Page 2

Ortonville from Soo the next year. *Burlington Northern Railroad Company -- Purchase Exemption -- Soo Line Railroad Company*, Docket No. FD 32003 (ICC served April 9, 1992).

In that circumstance, BNSF may not have remaining trackage rights on the Appleton-Ortonville segment that require discontinuance. *See Norfolk and Western Railway Company -- Acquisition Exemption -- Consolidated Rail Corporation*, Docket No. FD 32957 (STB served August 15, 1996) at 1, n.3 (when trackage rights and line ownership become unified, trackage rights effectively merge into the ownership and "cease to exist as separate rights."). In any event, the various references to TC&W in BNSF's petition do not apply to the Appleton-Ortonville segment.

TC&W also notes that the March 7, 1983 agreement (now expired) between BN and MILW that created the "trackage rights" at issue in this proceeding had many of the attributes of what the Interstate Commerce Commission later considered to be unregulated haulage rights. *See KNRECO Inc. d/b/a Keokuk Junction Railway -- Acquisition and Operation Exemption -- The Atchison, Topeka and Santa Fe Railway Company*, Docket No. FD 30918 (STB served April 28, 1988), *aff'd sub nom. Simmons v. ICC*, 871 F.2d 702 (7<sup>th</sup> Cir. 1989). BN had no right to run trains over MILW's line with its own crews. It could tender certain unit grain trains with BN power and cabooses to MILW for handling with MILW crews to elevators at certain designated locations. Non-unit grain traffic would be handled in MILW trains with MILW power, cabooses and crews. BN traffic remained in the account of BN while it was being handled by MILW.<sup>2</sup>

Thus, BNSF and its predecessor never conducted actual operations over TC&W and its predecessors pursuant to the 1983 agreement, and it would have been a relatively close question under subsequent agency precedent whether the 1983 agreement constituted "trackage rights." Because trackage rights authority was obtained in 1983, however, TC&W concurs in BNSF's current request for an appropriate discontinuance exemption. TC&W believes that no service of any kind has been provided pursuant to the 1983 agreement since approximately 1994, and TC&W thus also agrees with BNSF that no shipper or other interests would be adversely affected by the proposed discontinuance exemption.

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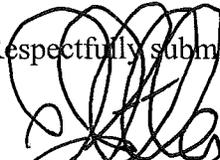
<sup>2</sup> *See* 1983 agreement, Sections 1.1 and 1.2, attached as Exhibit 2 to BN's Petition for Exemption filed May 6, 1983 in Docket No. FD 30191.

# FLETCHER & SIPPEL LLC

Ms. Cynthia T. Brown  
September 12, 2016  
Page 3

I certify that copies of this letter have been served by electronic and regular mail on counsel for BNSF.

Respectfully submitted,



Thomas J. Litwiler  
Attorney for Twin Cities & Western  
Railroad Company

TJL:tl

cc: Karl Morell, Esq.  
James M. Mecone, Esq.