

233192

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
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mcfarland@aol.com



THOMAS F. MCFARLAND

October 12, 2012

By UPS overnight mail
(Monday delivery)

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings
OCT 15 2012
Part of
Public Record

Re: Finance Docket No. 35683, *ABE Fairmont, LLC -- Acquisition and Operation Exemption -- BNSF Railway Company*

Dear Ms. Brown:

Hereby transmitted is the original and 10 copies of a Verified Notice Of Exemption Under 49 C.F.R. § 1150.41 for filing with the Board in the above referenced matter.

Also enclosed is a check in the amount of \$1,800 for the filing fee.

Very truly yours,

Thomas F. McFarland
Attorney for Applicant

TMcF:kl:enc:1562-A\trSTB1

FILED
OCT 15 2012
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
OCT 15 2012
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



ABE FAIRMONT, LLC -- ACQUISITION) FINANCE DOCKET
AND OPERATION EXEMPTION -- BNSF) NO. 35683
RAILWAY COMPANY)

VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.41

ENTERED
Office of Proceedings

OCT 15 2012

Part of
Public Record

ABE FAIRMONT, LLC
1214 County Road G
Fairmont, NE 68354

Applicant

FEE RECEIVED

OCT 15 2012

SURFACE
TRANSPORTATION BOARD

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204 (ph)
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Applicant

Date Filed: October 15, 2012

FILED

OCT 15 2012

SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



ABE FAIRMONT, LLC -- ACQUISITION) FINANCE DOCKET
AND OPERATION EXEMPTION -- BNSF) NO. 35683
RAILWAY COMPANY)

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.41**

Pursuant to 49 U.S.C. § 10502(a) and 49 C.F.R. § 1150.41 *et seq.*, ABE FAIRMONT, LLC (ABE), a Class III rail carrier^{1/}, hereby provides notice of its class exemption from 49 U.S.C. § 10902 for its acquisition from BNSF Railway Company (BNSF) and operation of a rail line between BNSF Milepost 1.7 and a connection to BNSF's main line, at Milepost 114.73, a distance of approximately 1.0 mile at or near Fairmont, Fillmore County, NE. The Rail Line is shaded in yellow on a map that is attached as Appendix 1.

EXPLANATION OF THE TRANSACTION

As is shown on the map offered as Appendix 1, ABE's acquisition of the Rail Line will extend ABE's ownership of a north-south-oriented branch line located at or near Fairmont, NE. ABE previously acquired two miles of the same branch (the "Southern Segment") immediately to the south of, and contiguous to, the Rail Line in 2006 from Fillmore Western Railway

^{1/} ABE became a rail carrier on October 5, 2012 when an exemption for its acquisition and operation of a two-mile rail line at Fairmont became effective. *See* Finance Docket No. 35673, *ABE Fairmont, LLC -- Acq. & Oper. Exempt -- Fillmore Western Ry. Co.*, Notice of Exemption served on September 21, 2012. That rail line connects to the rail line that is involved in this proceeding.

Company.^{2/} When the exemption in the present proceeding becomes effective, ABE will own approximately three miles of north-south-branch line track at or near Fairmont, reaching to a connection to BNSF's east-west-oriented main line.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

(a) The full name and address of the applicant;

Applicant is ABE Fairmont, LLC, 1214 County Road G, Fairmont, NE 68354.

b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

Applicant's representative is Thomas F. McFarland, Thomas F. McFarland, P.C. 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, ph (312) 236-0204, fax (312) 201-9695, mcfarland@aol.com.

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

An agreement has been reached pursuant to which ABE will acquire the Line from BNSF and will operate it.

(d) The operator of the property;

Upon consummation of the subject transaction, ABE will be the operator of the Line.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject operating authority,

The entity transferring the Rail Line is BNSF Railway Company, 2650 Lou Menk Drive, P.O. Box 961057, Fort Worth, TX 76161-0157.

^{2/} As ABE explained in its FD 35673 Notice of Exemption filing of September 5, 2012, ABE reasonably believed that the Southern Segment had been legally abandoned before ABE acquired it.

(2) The proposed time schedule for consummation of the transaction,

The parties intend to consummate the subject transaction no sooner than 30 days after filing of this notice, i.e., on or after November 14, 2012.

(3) The mile-posts of the subject property, including any branch lines, and

The Rail Line extends in a generally north-south direction between a point of connection with BNSF's east-west main line at Milepost 114.73 and BNSF Milepost 1.7, a distance of approximately 1.0 mile at Fairmont, Fillmore County, NE.

(4) The total route miles being acquired;

A total of approximately 1.0 mile of rail line will be acquired and operated.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States; and

The required map is attached as Appendix 1.

(g) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.

Attached as Appendix 2 is a certificate affirming that ABE's projected revenues as a consequence of the transaction will not result in the creation of a Class II or Class I rail carrier so as to require processing of this notice under 49 C.F.R. § 1150.45.

REVENUES LESS THAN \$5 MILLION PER YEAR

The verification attached as Appendix 2 verifies that the projected post-transaction revenues of ABE (accounting for ABE's operation of the Line and the Southern Segment as a consolidated branch line) will not exceed \$5 million per year. For this reason, ABE is not obligated to comply with the 60-day advance notice and posting requirements set forth at 49 C.F.R. § 1150.42(e).

ENVIRONMENTAL AND HISTORIC CONSIDERATIONS

Pursuant to 49 C.F.R. § 1105.6(c)(2), no environmental documentation or report is required for the proposed transaction, because the action proposed herein will not exceed any of the thresholds set forth at 49 C.F.R. § 1150.7(e)(4) or (5). Pursuant to 49 C.F.R. § 1105.8(b)(1), no historic documentation or report is required for the proposed transaction.

LABOR PROTECTION

Pursuant to 49 U.S.C. § 10901(c), no labor protection is required for the proposed transaction.

CAPTION SUMMARY

Attached to this notice as Appendix 3 is a caption summary required by 49 C.F.R. § 1150.34.

LAND GRANT RIGHT-OF-WAY

Applicant is not aware of any land grant right-of-way in the Rail Line.

NO INTERCHANGE COMMITMENTS

Current ABE-BNSF exchange of cars is not subject to any interchange commitments. Further, the agreement governing BNSF's conveyance of the Line does not impose any interchange commitment upon ABE. Accordingly, the informational requirements of 49 C.F.R. § 1150.43(h) do not apply.

CONCLUSION

WHEREFORE, the Board should publish notice of the exemption in the *Federal Register* within 16 days of its filing.

Respectfully submitted,

ABE FAIRMONT, LLC
1214 County Road G
Fairmont, NE 68354

Applicant

Thomas F. McFarland

THOMAS F. McFARLAND
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mcfarland@aol.com

Attorney for Applicant

Date Filed: October 15, 2012

TRACKING NO. SW 553

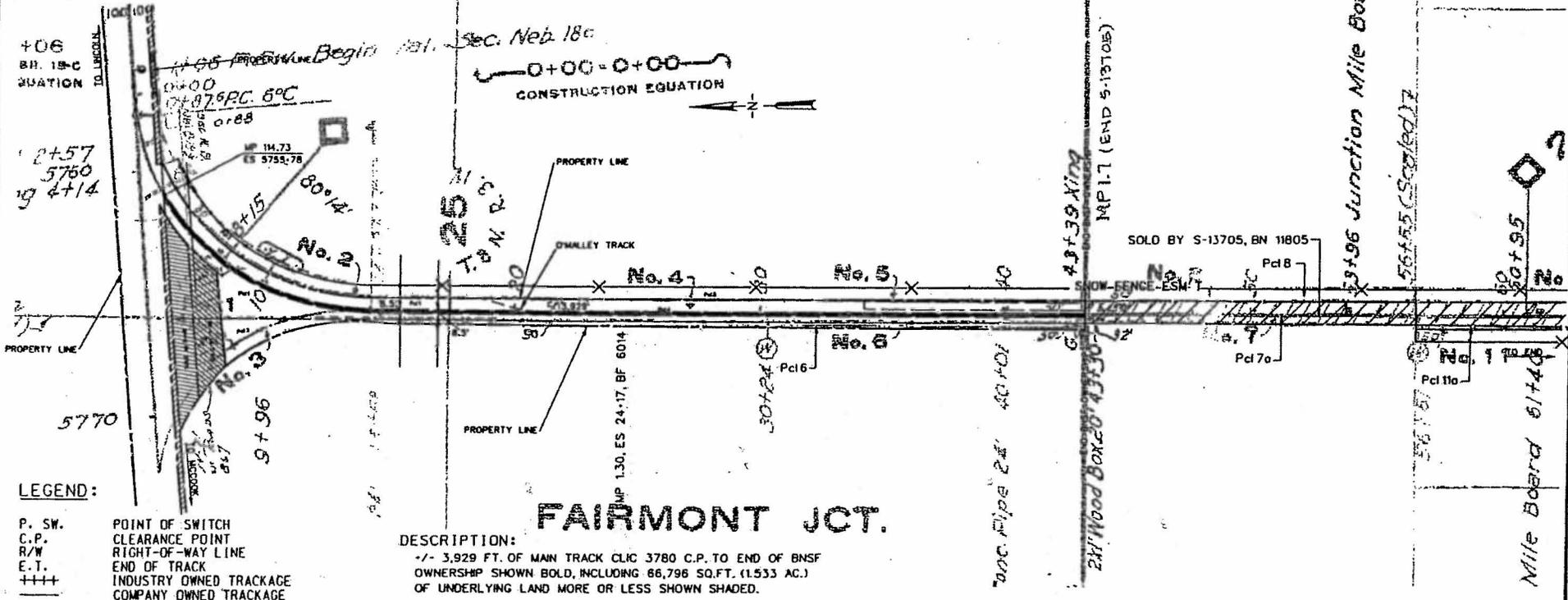
EXHIBIT "A"
 ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY
 AND
ADVANCED BIOENERGY

SCALE: 1 IN. = 400 FT.
 NEBRASKA DIV.
 HASTINGS SUBDIV. L.S. 0002
 DATE 12/14/2006
 REVISION DATE 12/20/2006
 REVISION DATE 01/09/2007
 REVISION DATE 04/17/2007

SECTION: 25
 TOWNSHIP: 8N
 RANGE: 3W
 MERIDIAN: 6PM

To Sta. 43+08
 Wood Posts
 & Stay

From Sta. 56+61 To Sta. 75+
 36" W., 20" W.W., Wood Posts
 16" to C., 1 Wood Stay



LEGEND:

- P. SW. POINT OF SWITCH
- C.P. CLEARANCE POINT
- R/W RIGHT-OF-WAY LINE
- E.T. END OF TRACK
- ++++ INDUSTRY OWNED TRACKAGE
- COMPANY OWNED TRACKAGE

DESCRIPTION:

-/- 3,929 FT. OF MAIN TRACK CLIC 3780 C.P. TO END OF BNSF OWNERSHIP SHOWN BOLD, INCLUDING 86,796 SQ.FT. (1.533 AC.) OF UNDERLYING LAND MORE OR LESS SHOWN SHADED.

FAIRMONT JCT.

NEAR FAIRMONT
 COUNTY OF FILLMORE

STATE OF NE

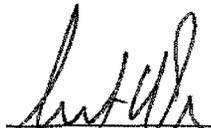
MAP REF. RB1594/563928

THM

VERIFICATION

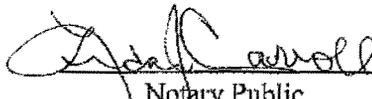
STATE OF NEBRASKA)
) SS:
COUNTY OF FILLMORE)

GRANT H. JOHANSON, being duly sworn, states as follows: (1) I am a representative of ABE FAIRMONT, LLC (ABE) authorized to make this verification; (2) the projected annual rail revenues from ABE's operation of its existing rail line and the line to be acquired from BNSF Railway Company pursuant to the subject notice of exemption will not exceed \$5 million; (3) ABE's projected annual revenues do not exceed those that would qualify it as a Class III rail carrier; and (4) all statements in the foregoing are true and correct.



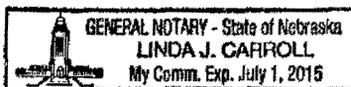
GRANT H. JOHANSON

SUBSCRIBED AND SWORN to
before me this 3rd day
of October, 2012.



Notary Public

My Commission Expires:



CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD
NOTICE OF EXEMPTION

(Finance Docket No.35683)

**ABE FAIRMONT, LLC -- ACQUISITION AND OPERATION
EXEMPTION -- BNSF RAILWAY COMPANY**

ABE Fairmont, LLC, (ABE), an existing Class III carrier, has filed a verified notice of exemption pursuant to the class exemption provisions at 49 C.F.R. § 1150.41 to acquire from BNSF Railway Company and to operate a rail line extending between BNSF Milepost 1.7 and connection to Milepost 114.73 on BNSF's main line, at or near Fairmont, a distance of approximately 1.0 mile in Fillmore County, NE.

ABE certifies that, upon consummation of the transaction, ABE's projected annual revenues will not exceed those that would qualify it as a Class III rail carrier. In addition, ABE's combined annual revenues from the operation of its existing lines and the line that is the subject of this notice of exemption will not exceed \$5 million, and, therefore, the requirements of 49 C.F.R. § 1150.42(e) do not apply.

This transaction is expected to be consummated on or after November 14, 2012.

Any comments must be filed with the Board and must be served on applicant's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, ph (312) 236-0204, fax (312) 201-9695, mcfarland@aol.com.

This notice of exemption is filed under 49 C.F.R. § 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

(SEAL)

By the Board