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January 8, 2014

235269

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

ENTERED  
Office of Proceedings  
January 8, 2014  
Part of  
Public Record

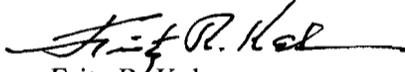
Re: Docket No. AB 1087 (Sub-No. 1X), Grenada Railway LLC—Abandonment  
Exemption—In Montgomery, Carroll, Holmes, Yazoo and Madison  
Counties, Miss.

Dear Ms. Brown:

Attached for filing in the subject proceeding is the Reply of Grenada Railway  
LLC to the Motion for Rejection Of Petition For Exemption Of Abandonment filed  
December 27, 2013, by Mr. Robert J. Riley.

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

Sincerely yours,

  
Fritz R. Kahn

Att.

Cc: Thomas F. McFarland, Esq.  
Representative Alan Nunnelee  
Representative Bennie Thompson

SURFACE TRANSPORTATION BOARD

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Docket No. AB 1087 (Sub-No. 1X)

GRENADA RAILWAY LLC—ABANDONMENT EXEMPTION—  
IN MONTGOMERY, CARROLL, HOLMES, YAZOO  
AND MADISON COUNTIES, MISS.

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REPLY  
OF  
GRENADA RAILWAY LLC

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Attorney for

GRENADA RAILWAY LLC

Dated: January 8, 2014

SURFACE TRANSPORTATION BOARD

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Docket No. AB 1087 (Sub-No. 1X)

GRENADA RAILWAY LLC—ABANDONMENT EXEMPTION—  
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REPLY  
OF  
GRENADA RAILWAY LLC

Petitioner, Grenada Railway LLC, (“GRYR”) pursuant to 49 C.F.R. § 1104.13(a), replies to the Motion for Rejection Of Petition For Exemption Of Abandonment filed by Mr. Robert J. Riley, a former locomotive engineer of Coldwater, Miss.<sup>1</sup>, as follows:

I.

Mr. Riley failed to establish entitlement to a hearing with cross examination.

GRYR, by its Petition for Exemption Abandonment, filed December 17, 2013, seeks the Board’s authorization to abandon the southern segment of its railroad line, between Milepost 626.1 near Elliott and Milepost 703.8 near Canton. Mr. Riley by his Motion urges rejection of the Petition and argues that the abandonment authorization should be sought by GRYR by hearing with the right of cross examination. He appears to ignore the fact that requests for the Board’s abandonment authorization universally are handled under the agency’s modified procedure and very properly so.

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<sup>1</sup> Coldwater is in Tate County approximately 100 miles north of the railroad line proposed to be abandoned by GRYR.

A request for the Board's abandonment authorization does not trigger a proceeding that is deemed to be adjudication under section 5 of the Administrative Procedure Act, 5 U.S.C. § 554. A hearing with the right of cross examination is called for only in a "case of adjudication required by statute to be determined on the record after opportunity for an agency hearing." Wong Yang Sung v. McGrath, 339 U.S. 33, 48 (1950). The Board's determination whether to grant an abandonment authorization, pursuant to 49 U.S.C. § 10903, does not require that it render its decision only after a hearing. Accordingly, the Board's abandonment proceedings are handled under its modified procedure. The bellwether case upholding the propriety of the agency's modified procedure is Slay Transp. Co. v. United States, 353 F. Supp. 555, 558 (E.D. Mo. 1973), in which the court held:

"While plaintiff made a timely application for oral hearing and for an opportunity to cross-examine witnesses supporting the application, the [Interstate Commerce] Commission instead ordered the applications processed pursuant to its modified procedure whereby all parties are allowed ample opportunity to present their evidence, including rebuttal, in writing. . . . No serious contention is made that the modified procedure is violative of due process. Indeed, the Administrative Procedure Act does not require oral hearings, and such hearings are required only when mandated by some other statutory requirement not present in or applicable to this case."

The court's determination is no less true of the instant proceeding, and Mr. Riley has not – and cannot -- cite a single decision of the Board or its predecessor, the Interstate Commerce Commission, in which the conclusion whether to grant the abandonment authorization was arrived at after hearing with the right of cross examination.

To be sure, the Board's modified procedure allows a party to seek a hearing with the right of cross examination. 49 C.F.R. § 1112.10(a) provides:

" Requests for oral hearings in matters originally assigned for handling under modified procedure must include the reasons why the matter cannot be properly resolved under

modified procedure. Requests for cross examination of witnesses must include the name of the witness and the subject matter of the desired cross examination.”

Mr. Riley’s Motion fails completely to meet the regulation’s requirements. It does not name the affiants whose testimony was included in GRYR’s Petition whom Mr. Riley would like to cross examine or identify the subject matters to be covered by the cross examination. Indeed, Mr. Riley fails to explain in his Motion why the matters cannot be properly resolved under modified procedure. To the contrary, at pages 5 and 7 of his Motion, Mr. Riley notes that he is able to pursue discovery, which amounts to a tacit admission that no hearing with the right of cross examination is required and that the handling of GRYR’s Petition under modified procedure is altogether proper and appropriate.

## II.

### Mr. Riley has been accorded a hearing.

In his Motion for Rejection Of Petition For Exemption Of Abandonment Mr. Riley conveniently overlooks the fact he has had a hearing. The Board, by its Decisions in Docket No. FD 35247, Grenada Railway, LLC—Acquisition and Operation Exemption—Illinois Central Railroad Company and Waterloo Railway Company, and Docket No. FD 35247 (Sub-No. 1), Grenada Railway LLC—Rail Line in Grenada, Montgomery, Carroll, Holmes, Yazoo and Madison Counties, Miss., served September 10 and 30, 2013, determined to held a hearing on November 15, 2013, in Winona, Miss. Its purpose was “to allow interested persons to appear and speak on the effects of the embargo” that GRYR had imposed in July of 2011.

Mr. Riley was ill equipped to address the subject of the Winona hearing for he is neither a shipper nor an elected community representative, and, therefore, he has no

personal knowledge of the effects of the embargo. Nevertheless, Mr. Riley chose to be the first of the speakers at the Winona hearing. He, however, did not talk about the effects of the embargo. Rather, he elected to use the hearing to offer his views of the “five criteria [the STB considers] in determining whether or not an embargo of a rail line was an unlawful abandonment.” Tr., p. 10. Those same five factors are discussed by Mr. Riley in the Motion he filed in the instant proceeding.

At the Winona hearing, Mr. Riley said, “[T]he first point [is] the intent of the rail carrier.” Tr., p. 10. Claiming that GRYR sought no financial assistance from the State for the southern segment of its line, Mr. Riley contended that GRYR’s plan “I think was probably pretty clear; that they were going to abandon the railroad or at least attempt to do so.” Tr., p. 11. At page 5 of his Motion, Mr. Riley says, “The controlling issue here is whether the purpose and effect of the lengthy embargo was to preordain abandonment of the rail line.”

At the Winona hearing, Mr. Riley, referring to GRYR’s rate increase on southbound shipments, claimed, “We feel like that that was an idea to run business off or at least discourage use of the south end.” Tr., p. 11. At page 5 of his Motion, Mr. Riley identifies the rate increase as “action taken by GRYR to discourage traffic over the rail line.” At the Winona hearing, Mr. Riley maintained that GRYR embargoed the bridge “to put something in motion to get the business run off.” Tr., pp. 11-12.. At page 5 of his Motion, Mr. Riley states, “When some southbound traffic continued to move over the rail line, GRYR imposed the embargo to shut off even that reduced traffic level.”

At the Winona hearing, Mr. Riley said, “[T]he length of time that the embargo remained in effect, that’s another point there under the five criteria. The length of time

that the embargo was in effect was two years, which incidentally expired July of this year.” Tr., pp. 15-16. At page 5 of his Motion, Mr. Riley poses the issue as a question, “Why did GRYR fail for so long either to repair the condition that gave rise to the embargo, or to seek approval of abandonment if repair was deemed to be uneconomical.”

At page 4 of his Motion, Mr. Riley acknowledges that the cost of repair and the traffic volume and revenues are further determinants of the reasonableness of a railroad’s embargo. At the Winona hearing, Mr. Riley claimed that in the five years of GRYR’s operations it handled 20,000 cars at an average of \$1,200 a car and that repairing the bridge at Milepost 656.4 would cost no more than \$15,000. “If you can’t afford to spend \$15,000 to fix a bridge after you have made \$20 million, something is wrong.” Tr., p. 17.

Mr. Riley needs no further hearing. He used the Winona hearing to denigrate the very criteria which the Board will be considering in the instant proceeding to determine whether GRYR’s embargo was reasonable and its Petition should be granted.

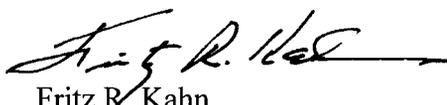
To be sure, in his Motion Mr. Riley raises a couple of matters which he did not mention at the Winona hearing, such as the FRA rating of GRYR’s track and the frequency of service. Mr. Riley, however, fails to name the witnesses he would cross examine or identify the subject matter of his cross examination. Failing to observe the requirements of 49 C.F.R. § 1112.10(a), Mr. Riley advances no reason why the matters cannot be properly resolved under modified procedure. His Motion is totally devoid of substance but rather is an obvious effort to harass and prejudice GRYR.

WHEREFORE, Grenada Railway LLC respectfully asks that Mr. Robert J. Riley’s Motion For Rejection Of Petition For Exemption Of Abandonment be denied.

Respectfully submitted,

GRENADA RAILWAY LLC

By its attorney,



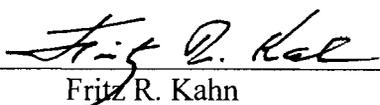
Fritz R. Kahn  
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Washington, DC 20036  
Tel.: (202) 263-4152

Dated: January 8, 2014

CERTIFICATE OF SERVICE

I certify that I this day served the foregoing Reply upon Mr. Robert J, Riley by e-mailing a copy to his attorney, Thomas F. McFarland, Esq. at [mcfarland@aol.com](mailto:mcfarland@aol.com), and on Representatives Thompson and Nunnelee by mailing them copies by prepaid first-class mail.

Dated at Washington, DC this 8<sup>th</sup> day of January, 2014.



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Fritz R. Kahn