

237300

237301

December 22, 2014

ENTERED
Office of Proceedings
December 22, 2014
Part of
Public Record

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

Re: Missouri Central Railroad Company – Abandonment Exemption – Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri, STB Docket AB-1068 (Sub-No. 3X) and Central Midland Railway Company – Discontinuance of Service Exemption– Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri, STB Docket AB-1070 (Sub-No. 3X)

Dear Ms. Brown:

This letter responds to the letter of December 17, 2014 by the Missouri Farm Bureau Federation (“MFBF”) to the Director of the Office of Proceedings regarding the above-referenced proceedings.

Missouri Central Railroad Company (“MCRR”) respectfully responds that all the concerns raised by MFBF are without merit or justification to hold a hearing or delay these proceedings.

The Surface Transportation Board (“STB” or “Board”) published the Notice of Exemption in the Federal Register on December 8, 2014 and the proceedings qualify for the exemption because there has been no traffic for two years. MFBF does not allege that there are any shippers or that there has been a reasonable request for service on the line.¹ Moreover, MFBF does not allege that there is any false or misleading information that would warrant the Notice being declared void. MFBF does not raise a valid transportation issue for the Board’s consideration because there are none. Even if this were a petition for exemption proceeding, where the Board actively balances the potential harm to shippers and communities against the present and future burden of

¹ MFBF does not assert its interest in filing an offer of financial assistance (“OFA”) to acquire the line. This is not surprising, given that there has been no request for service in years and no showing that a shipper would make use of common carrier service, thus, an OFA is not justified. See Wisconsin Central Ltd. – Abandonment Exemption – In Barron County, Wis., STB Docket AB-303 (Sub-No. 43X) slip op at 6.

continued operations on the railroad and interstate commerce, this abandonment would be justified based on the lack of requests for service.

MCRR actually shares the view for the concept underlying the first part of MFBF's policy statement that keeping a line as a railroad can be vital to agriculture and the rural economy. However, there has been no reasonable request for service on the line in many years and thus, while this altruistic goal is lofty, it does not justify MFBF's request for a hearing or a stay in these proceedings.

Moreover, the first part of MFBF's policy position is inconsistent with the second part of its statement regarding a potential trail under the National Trails System Act, 16 USC § 1247(d) ("Trails Act"). Conversion of this corridor to a trail under the Trails Act is the ideal way to preserve this corridor for potential future rail use that could support future growth in agriculture and the economy of rural communities.

Likewise, MFBF's support for continued rail service is not consistent with the landowner concerns regarding bisected properties. These landowners are not lawfully using the railroad property. Whether there is continued rail service or a trail, the impact to landowners remains the same as it has since the Rock Island was built in the early 1900's. Notwithstanding the policy statement inconsistencies, the remaining issues raised by MFBF are issues that have been previously addressed by the STB and should not be consider here.

The STB's imposition of the Notice of Interim Trail Use ("NITU") under the Trails Act is limited and largely ministerial. MFBF's concerns regarding the overall repeal of the Trails Act should be addressed to Congress not the STB. Furthermore, MFBF's other concerns raised regarding the rails-to-trails conversion were recently addressed by the Board in a public rulemaking with notice and comment period (which MFBF did not participate in but could have done so). See *National Trails System Act and Railroad Rights-of-Way*, STB Ex Parte No. 702, Final Rule issued Apr. 30, 2012.

Finally, to the extent that MFBF's letter raises "environmental" concerns, these issues have been or will be appropriately addressed as part of the STB's environmental review and conditions that are expected to be imposed in the abandonment proceeding. It is not uncommon for state and federal agencies to not provide specific comment during a notice of exemption proceeding. Nevertheless, in the Environmental Assessment ("EA") issued December 12, 2014, the STB's environmental staff recommended conditions to address all relevant environmental issues associated with the abandonment.² In fact, if the Section 106 and other conditions in the EA and the NITU requested by the Missouri Department of Natural Resources are imposed by the STB as expected -- which both specifically prohibit MCRR from altering or disposing of the property until further action by the Board -- the Board will have addressed and provided a roadmap to finalize all appropriate environmental issues. MCRR has shown that it has and will address

² Any environmental issues associated with the Trails Act conversion and any subsequent trail that is built on the corridor is a separate action from this proceeding and would be subject to any applicable environmental review for that separate action in the future.

appropriate environmental issues and conditions as evidenced by its actions in the prior two abandonments in AB 1068X and AB1068 (Sub-No. 1X).

In conclusion, there is no need or justification for hearings or a stay³ or any delay in these proceedings and MCRR urges the Board to continue expeditiously moving these proceedings toward completion which is consistent with the Board's abandonment and environmental statutes, regulations and precedent.

Please do not hesitate to contact the undersigned if you have any questions.

Yours very truly,



Sandra L. Brown
Attorney for Missouri Central Railroad Company

cc: Blake Hurst, Missouri Farm Bureau Federation
Lon Van Gemert, Central Midland Railway
Mary Moulton Bryan, Missouri Department of Natural Resources

³ MFBF's request also does not justify a stay because it does not mention or satisfy any of the standards that a party must meet in order for a stay to be granted. See, e.g., *Washington Metro Area Transit Comm. v. Holiday Tours, Inc.*, 559 F. 2d 841, 843 (D.C. Cir. 1977).
