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January 14, 2014

By e-filing

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

235295
ENTERED
Office of Proceedings
January 14, 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, MS*

Dear Ms. Brown:

Hereby transmitted is a Supplement To Motion For Rejection Of Petition For Exemption Of Abandonment for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland
Attorney for Robert J. Riley

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cc: All parties of record

BEFORE THE
SURFACE TRANSPORTATION BOARD

GRENADA RAILWAY LLC --)
ABANDONMENT EXEMPTION -- IN) DOCKET NO.
MONTGOMERY, CARROLL, HOLMES,) AB-1087 (Sub-No. 1X)
YAZOO, AND MADISON COUNTIES,)
MS)

**SUPPLEMENT TO
MOTION FOR REJECTION OF PETITION FOR
EXEMPTION OF ABANDONMENT**

ROBERT J. RILEY
1799 Greer Road
Coldwater, MS 38618

Protestant

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DATE FILED: January 14, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

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|------------------------------|---|----------------------|
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| ABANDONMENT EXEMPTION -- IN |) | DOCKET NO. |
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| MS |) | |

**SUPPLEMENT TO
MOTION FOR REJECTION OF PETITION FOR
EXEMPTION OF ABANDONMENT**

Pursuant to the Board's procedural decision served January 6, 2014, Protestant Robert Riley (Riley) hereby files a Supplement to his Motion for Rejection of Petition for Exemption of Abandonment, filed on December 27, 2013.

PROCEDURAL BACKGROUND

On December 17, 2013, Grenada Railway, LLC (GRYR) filed a Petition for Exemption of Abandonment (Petition) of its rail line between Milepost 626.1 near Elliott and Milepost 703.8 near Canton, a distance of 77.7 miles in Montgomery, Carroll, Holmes, Yazoo, and Madison Counties, MS (the Rail Line).

On December 27, 2013, Riley filed a Motion for Rejection of the Petition (Motion).

On January 6, 2014, the Board issued a procedural decision (January 6 decision). It was stated in note 2 on page 2 of that decision that the Board would rule on the Motion in a separate decision. It was provided in the decision that replies to the Petition can be filed on or before January 27, 2014.

On January 8, 2014, GRYR filed a Reply in opposition to Riley's Motion (Reply).

This Supplement to Motion is filed in order to identify serious distortions contained in GRYR's Reply. If this Supplement is deemed to constitute a reply to a reply, Riley hereby respectfully requests leave to file this Supplement as essential for a clear understanding of Riley's Motion.

ARGUMENT

I. GRYR's Argument That There Is No Opportunity For Hearing With Cross-Examination In Abandonment Proceedings Is Contrary To An Explicit Board Regulation

GRYR appears never to have read the Board's abandonment regulation at 49 C.F.R. § 1152.25(d)(6)(i) that specifically provides for opportunity for oral hearing with cross-examination in abandonment application proceedings, i.e. (emphasis added):

(6) Oral hearings. (i) Any oral hearing request is due 10 days after the filing of the (abandonment) application. The Board, through the Director of the Office of Proceedings, will issue a decision on any oral hearing request within 15 days after the filing of the application. If the Board decides to hold an oral hearing, the oral hearing shall be for the primary purpose of cross-examination of witnesses filing verified statements in the proceeding. Any direct testimony, other than applicant's rebuttal evidence, shall be received at the discretion of the hearing officer.

That specific Board regulation flatly contradicts GRYR's argument that there is no opportunity for hearing with cross-examination in abandonment proceedings.

GRYR is also flatly wrong in contending that Board abandonment proceedings "universally are handled under the agency's modified procedure" (Reply at 1). GRYR has challenged Riley to name a single STB or ICC decision in which the decision on abandonment was arrived at after hearing with the right of cross-examination (Reply at 2).

There have been scores of such abandonment decisions, including a dozen or more in which undersigned counsel actively participated in the hearing and cross-examined rail carrier witnesses. See, e.g., *Union Pacific RR Co. -- Aban -- Wallace Branch, ID*, 9 I.C.C.2d 326, 327 (1993) (undersigned counsel participated); *Baltimore and Ohio R. Co. Abandonment*, 354 I.C.C. 67, 68 (1977); *Baltimore and Ohio R. Co. Abandonment*, 354 I.C.C. 798, 799 (1978) (undersigned counsel participated); *Texas and Pacific Railway Company Abandonment*, 360 I.C.C. 31 (1978); *Norfolk & W. Ry. Co. Abandonment*, 363 I.C.C. 115, 116 (1980) (undersigned counsel participated); and *Illinois Central Gulf R. Co. - Abandonment*, 363 I.C.C. 729 (1980).

Moreover, the provision for opportunity for oral hearing with cross-examination in abandonment proceedings is not an anachronism. The regulation providing for an opportunity for hearing with cross-examination in abandonment application cases was adopted by this Board in implementing the ICC Termination Act. See *Aban. and Discon. of R. Lines and Transp. under 49 U.S.C. 10903*, 1 S.T.B. 894, 896 (1996). The Board thus has full regulatory authority to grant a request for oral hearing in regard to an abandonment application in which there is evidence of egregious downgrading of rail service leading to abandonment, and segmentation of abandonment to eliminate a through route that would otherwise provide rail-to-rail competition. GRYR's proposed abandonment is such a case in which the national rail policies in favor of rail competition and an adequate national rail system strongly dictate abandonment application procedure with oral hearing and cross-examination to uncover truth.

In view of the foregoing, GRYR's argument at page 2 of the Reply that there is no right to cross-examination in abandonment cases misses the point. While there may be no unqualified right in that respect, there surely is an opportunity for such cross-examination at oral hearing in

the Board's own abandonment regulations. GRYR would have the Board disregard its own oral hearing regulation.

The specific abandonment regulation providing an opportunity for oral hearing with cross-examination in abandonment application proceedings clearly trumps the more general regulation at 49 C.F.R. § 1112.10(a) providing for requests for oral hearing and cross-examination in cases "originally assigned for modified procedure." (Reply at 2-3). (Cf. 49 C.F.R. § 1152.25(e)(1), specific appellate procedures in the Board's abandonment regulations are to be followed in abandonment proceedings in lieu of the more general appellate procedures at 49 C.F.R. § 1115). Moreover, GRYR's abandonment proposal has not been "assigned for modified procedure". Instead, GRYR is proposing that the abandonment proposal be handled under exemption procedure, not modified procedure. Thus, the issue in the present case is exemption procedure versus application procedure, not modified procedure versus oral hearing.

The regulation providing for an opportunity for oral hearing with cross-examination in abandonment application proceedings does not require that a person seeking such an opportunity name the witness sought to be cross-examined, nor the subject matter of the desired cross-examination. Thus, GRYR is wrong that the absence of that information defeats Riley's Motion (Reply at 3).

GRYR is also mistaken that Riley's Motion seeks "entitlement" to a hearing with cross-examination (heading of Reply I at 1). GRYR seeks rejection of exemption procedure and processing by application procedure (if abandonment still is to be sought). One of the essential features of that application procedure is an opportunity to seek an oral hearing with cross-examination (not entitlement to such a hearing). If GRYR's Petition is rejected, and application

procedure is utilized by GRYR, Riley is prepared to request an opportunity for oral hearing with cross-examination, and to specifically support such request along the lines outlined in the Motion at that time.

There are other features of application procedure identified in Riley's Motion that GRYR's has totally ignored, such as mandatory submission of workpapers in support of revenues and costs, and full explanation and support for other forecast year financial data. Those uncontradicted factors also strongly militate in favor of abandonment application procedure instead of exemption procedure.

II. The Hearing Alleged To Have Been Accorded Was Not A Hearing Under the Board's Abandonment Regulations

GRYR's contention that Riley has already been accorded a hearing (Reply at 3-5) is disingenuous in the extreme. Not only was that hearing not an oral hearing with cross-examination under 49 C.F.R. § 1152.25(d)(6)(i), that hearing was not even held in this abandonment docket. Instead, the hearing was held in Finance Docket No. 35247 (Sub-No. 1), in which the lawfulness of GRYR's embargo is under investigation. The issues in that docket differ materially from the issues in this abandonment proceeding. Thus, GRYR's contention is to be disregarded.

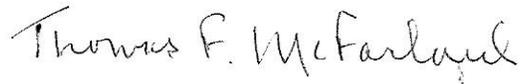
CONCLUSION AND REQUESTED RELIEF

WHEREFORE, the Board should reject GRYR's Petition for Exemption of Abandonment, and should require GRYR to file an abandonment application if it continues to seek abandonment of the rail line.

Respectfully submitted,

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DATE FILED: January 14, 2014

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2014, I served a copy of the foregoing document, Supplement To Motion For Rejection Of Petition For Exemption Of Abandonment, on the following:

(by e-mail)

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