

**HARKINS CUNNINGHAM LLP**

*Attorneys at Law*

David A. Hirsh  
202.973 7606  
dhirsh@harkinscunningham.com

1700 K Street, N.W.  
Suite 400  
Washington, D.C. 20006-3804  
Telephone 202.973.7600  
Facsimile 202.973.7610

RECEIVED  
JUL 5 2012  
MANAGEMENT  
STB

July 5, 2012

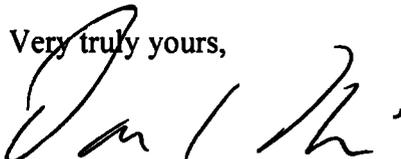
Ms. Cynthia Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

232534

**Re: *Progressive Rail Incorporated – Discontinuance of Service Exemption – In Barron County, Wisconsin (Docket No. AB 1101)***X

Dear Ms. Brown:

Enclosed please find an original and 10 copies of the Petition for Exemption for filing in the above-referenced docket. Also enclosed are a CD containing the text of this filing in Microsoft Word and PDF formats and a check for the filing fee of \$6,300, as required under 49 C.F.R. § 1002.2(f)(21)(iii).

Very truly yours,  
  
David A. Hirsh

Enclosures

**FILED**  
JUL 05 2012  
SURFACE  
TRANSPORTATION BOARD

**ENTERED**  
Office of Proceedings  
JUL 06 2012  
Part of  
Public Record

**FEE RECEIVED**  
JUL 05 2012  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD



---

Docket No. AB 1101X

---

PROGRESSIVE RAIL, INCORPORATED  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN BARRON COUNTY, WISCONSIN

---

**JOINT PETITION FOR EXEMPTION**

Thomas F. McFarland  
Thomas F. McFarland, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204

*Counsel for Progressive Rail,  
Incorporated*

David A. Hirsh  
James M. Guinivan  
HARKINS CUNNINGHAM LLP  
1700 K Street, N.W., Suite 400  
Washington, D.C. 20006-3804  
(202) 973-7600

Theodore K. Kalick  
CN  
Suite 500 North Building  
601 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-3608  
(202) 347-7840

Thomas J. Healey  
CN  
17641 South Ashland Avenue  
Homewood, IL 60430-1339  
(708) 332-4381

*Counsel for Wisconsin Central Ltd.*

July 5, 2012

BEFORE THE  
SURFACE TRANSPORTATION BOARD



---

Docket No. AB 1101

---

PROGRESSIVE RAIL, INCORPORATED  
– DISCONTINUANCE OF SERVICE EXEMPTION –  
IN BARRON COUNTY, WISCONSIN

---

**JOINT PETITION FOR EXEMPTION**

Progressive Rail, Incorporated (“PGR”) and Wisconsin Central Ltd. (“WCL”) (together, “Petitioners”) hereby petition the Surface Transportation Board (the “Board”), pursuant to 49 U.S.C. § 10502(a), 49 C.F.R. Part 1121, and 49 C.F.R. Part 1152, Subpart G, for an exemption from the requirements of 49 U.S.C. § 10903 with regard to discontinuance of rail service by PGR over 23.97 miles of rail line in Barron County, Wisconsin (the “Lines”), consisting of (1) 16.92 miles of rail line between milepost 80.88 at or near Almena and milepost 97.80 at or near Cameron (the “Almena-Cameron Branch”), and (2) 7.05 miles of rail line between milepost 49.0 at or near Cameron and milepost 56.05 at or near Rice Lake (the “Rice Lake-Cameron Branch”).<sup>1</sup> The Lines are

---

<sup>1</sup> Because this petition proposes a discontinuance of service rather than an abandonment, the Board need not consider offers of financial assistance (“OFAs”) under 49 U.S.C. § 10904 for acquisition of the Lines, trail use requests under 16 U.S.C. § 1247(d), or requests under 49 U.S.C. § 10905 to negotiate for public use of the Lines, and it typically does not consider such offers or requests. *See, e.g., Mfrs. Ry. – Discontinuance Exemption – In St. Louis County, Mo.*, Docket No. AB 1075X, slip op. at 6 (STB served July 12, 2011) (“*Manufacturers*”); *N. Lines Ry. – Discontinuance of Service Exemption – In Stearns County, Minn.*, Docket No. AB 1011 (Sub-No. 1X), slip op. at 2 (STB served May 20, 2011) (“*Northern Lines*”); *Mo. & Valley Park R.R. – Discontinuance of Service Exemption – In St. Louis County, Mo.*, Docket No. AB 1057X,

owned by WCL and have been operated by PGR since 2004 under lease from WCL. WCL intends to resume operating the Lines itself.

### PROPOSED TRANSACTION

PGR proposes to discontinue all its operations over the Lines, permitting WCL to resume direct freight rail service as owner of the Lines.

A map of the Lines, satisfying the requirements of 49 C.F.R. §§ 1152.22(a)(4) and 1152.60(b), is attached as Exhibit A.

The Lines traverse U.S. Postal Service ZIP codes 54805, 54812, 54822, and 54868. To the best of WCL's knowledge, the Lines do not contain federally granted right-of-way. Any documentation in Petitioners' possession will be made available promptly to those requesting it.

A draft Federal Register notice, as required under 49 C.F.R. § 1152.60(c), is attached as Exhibit B. Pursuant to 49 C.F.R. § 1105.12, notice of the proposed discontinuance was published on July 3, 2012, in the Barron News-Shield, a newspaper of general circulation in Barron County. A copy of the notice is attached to the certification provided as Exhibit C.

### FACTUAL BACKGROUND

PGR is a Class III rail carrier, which operates rail lines in Minnesota, Wisconsin, and Missouri. WCL is an indirect wholly owned subsidiary of Canadian National Railway Company. PGR has operated the Lines since 2004 pursuant to a Lease and

---

slip op. at 2-3 (STB served June 15, 2010) ("*Missouri & Valley Park*"); *Cent. Ill. R.R. – Discontinuance of Service Exemption – In Cook County, Ill.*, Docket No. AB 1066 (Sub-No. 2X), slip op. at 3 (STB served Nov. 16, 2010) ("*Central Illinois*").

Option to Purchase dated October 13, 2004 (“Lease Agreement”).<sup>2</sup> The original Lease Agreement expired by its terms at the end of 2008, but PGR, without objection by WCL, has continued to operate the Lines.<sup>3</sup> More recently, WCL has developed plans to resume its own rail operations on the Lines in lieu of PGR. In order to provide for this change, PGR and WCL entered into an Amendment and Reinstatement of Lease, dated May 14, 2012 (“Termination Agreement”), which, among other things, (1) extends the lease, but permits WCL to terminate it on December 1, 2012, by serving notice on or by November 1, 2012, and (2) provides for the parties to seek regulatory authority for discontinuance of PGR’s operations on the Lines, which would permit termination of the lease and cessation of PGR’s operations on the Lines.

#### EXEMPTION REQUESTED FROM 49 U.S.C. § 10903

Pursuant to the Termination Agreement, PGR and WCL request that the Board exempt PGR’s proposed discontinuance from the regulatory requirements of 49 U.S.C. § 10903. Under that section, a rail carrier may not discontinue service over one of its rail lines without prior approval from the Board. Under 49 U.S.C. § 10502(a), however, the Board must exempt a proposed transaction from regulation under a provision of 49 U.S.C. §§ 10101-11908 whenever it finds that (1) application of that provision is not

---

<sup>2</sup> The lease was exempted from Board regulation in *Progressive Rail, Inc. – Lease & Operation – Rail Lines of Wisconsin Central, Ltd.*, STB Finance Docket No. 34600 (STB served Nov. 12, 2004).

<sup>3</sup> PGR, of course, cannot cease operations on the Line until it obtains discontinuance authority under 49 U.S.C. § 10903 or an exemption from the requirements of that section. *Thompson v. Texas Mexican Ry.*, 328 U.S. 134, 144-45 (1946) (applying predecessor of 49 U.S.C. § 10903); *Smith v. Hoboken R.R., Warehouse & S.S. Connecting Co.*, 328 U.S. 123, 130 (1946) (same).

necessary to carry out the Rail Transportation Policy of 49 U.S.C. § 10101 (“RTP”); and (2) either (a) the transaction is of limited scope, or (b) application in whole or in part of the provision is not necessary to protect shippers from the abuse of market power. 49 U.S.C. § 10502(a). Because the proposed discontinuance is fully consistent with the RTP, is limited in scope, and would not lead to an increase in market power that could allow the abuse of shippers, the Board should grant Petitioners’ request to exempt that discontinuance.

**A. Regulation Is Not Necessary to Carry Out the RTP**

Detailed scrutiny of PGR’s proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP. An exemption would minimize the administrative expense of the application process, expediting regulatory action and reducing regulatory barriers to exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). An exemption would also foster sound economic conditions and encourage efficient management by allowing PGR to discontinue its common carrier obligation to provide service upon termination of the lease, and by allowing WCL to resume operations on the Lines, consistent with 49 U.S.C. §§ 10101(5) and (9). *See, e.g., Northern Lines, supra* note 1, slip op. at 2; *Central Illinois, supra* note 1, slip op. at 2. Moreover, granting the requested exemption would not be adverse to the remaining elements of the RTP. In particular, competition and continuation of a sound rail transportation system would not be adversely affected.

**B. The Proposed Discontinuance Is of Limited Scope**

In determining whether a proposed abandonment or discontinuance is of limited scope, the Board considers such factors as the length of the rail line, the number of

shippers on the line, and the nature and volume of traffic on the line. *See, e.g., Tulare Valley R.R. – Abandonment Exemption – In Tulare & Fresno Counties, CA*, Docket No. AB-397 (Sub-No. 3X), slip op. at 4 (ICC served Feb. 9, 1995) (“*Tulare*”); *Burlington N. R.R. – Abandonment Exemption – In Greene & Polk Counties, MO*, Docket No. AB-6 (Sub-No. 349X), slip op. at 2 (ICC served Aug. 27, 1993) (“*BN*”); *Fla. W. Coast R.R. – Abandonment Exemption – Gilchrist & Levy Counties, FL*, Docket No. AB-247 (Sub-No. 1X), slip op. at 2 (ICC served Jan. 16, 1992) (“*FWC*”); *Ga. Midland Ry. – Abandonment & Discontinuance of Service Exemption – In Spalding, Pike, Merriwether, Talbot, Harris, & Muscogee Counties, GA*, Docket No. AB-290 (Sub-No. 3X), slip op. at 4 (ICC served June 15, 1988) (“*Georgia Midland*”).

In this case, the scope of the impact of the proposed discontinuance is limited by the very nature of the proposed discontinuance, because the Lines would continue to be operated by their owner, WCL, following PGR’s discontinuance of service. In any event, the Lines at issue here are only 23.97 miles in total length, or shorter than many rail lines whose abandonments, or for which discontinuance of service, has been found to be of limited scope.<sup>4</sup> Moreover, there are only six active shippers located on the Lines. Under

---

<sup>4</sup> *E.g., BN*, slip op. at 2 (30.40 miles); *NRUC Corp. – Petition for Exemption – Discontinuance of Service & Operations in St. Lawrence County, NY*, Docket No. AB-322 (Sub-No. 1X), slip op. at 3 (ICC served Jan. 25, 1991) (43.2 miles); *Tex. N.W Ry. – Abandonment & Discontinuance of Service Exemption – Hansford & Hutchinson Counties TX; Texas County, OK; and Seward County, KS*, ICC Docket No. AB-281X, slip op. at 3 (ICC served Aug. 19, 1987) (56-miles abandoned; 37 miles discontinued); *Georgia Midland*, slip op. at 3 (67 miles, of which 43.9 miles carried active traffic); *Mo.-Kansas-Texas R.R. – Exemption – Discontinuance of Trackage Rights in Cass & Lancaster Counties, NE*, Docket No. AB-102 (Sub-No. 14X), slip op. at 2 (ICC served Mar. 5, 1987) (47.35 miles); *Union Pac. R.R. – Exemption – Discontinuance of Operations in Lewis, Thurston & Grays Harbor Counties, WA*, Docket No. AB-33 (Sub-No. 39X), slip op. at 5 (ICC served Jan. 12, 1987) (28.70 miles).

these circumstances, even leaving aside the nature of the proposed discontinuance, the proposed transaction is clearly of limited scope.

C. Regulation Is Not Necessary to Protect Shippers from Abuse of Market Power

The proposed discontinuance is of limited scope; accordingly, whether regulation is unnecessary to protect shippers from an abuse of market power is not at issue.

Nonetheless, it is clear that regulation of the proposed discontinuance is not necessary to protect shippers from the abuse of market power, as WCL proposes to resume operations on the Lines, and no shipper would lose service as a result of the discontinuance.<sup>5</sup>

ENVIRONMENTAL AND HISTORIC REPORTING REQUIREMENTS

Because Petitioners seek discontinuance of service, following which WCL will continue to operate the Lines, rather than abandonment, environmental reporting requirements under 49 C.F.R. § 1105.6(c) do not apply. *Manufacturers*, *supra* note 1, slip op. at 6-7; *Central Illinois*, slip op. at 3; *Missouri & Valley Park*, *supra* note 1, slip op. at 3. Also, in accordance with 49 C.F.R. § 1105.8(b), no historic documentation is required because WCL owns and will continue to operate the Lines, further STB approval would be required for WCL to abandon service, and WCL has no plans to dispose of or

---

<sup>5</sup> See, e.g., *Timber Rock R.R. – Discontinuance of Serv. Exemption – In Burlison, Brazos, Grimes, Montgomery, Liberty, Hardin & Jefferson Counties, TX*, STB Docket No. AB-998X, slip op. at 2 (STB served Jan. 25, 2007); *Cent. R.R. of Indianapolis – Discontinuance Exemption – In Grant County, IN*, STB Docket No. AB-511 (Sub-No. 2X), slip op. at 2 (STB served Jan. 28, 2002); *Gateway W. Ry. – Discontinuance of Serv. Exemption – In Jackson County, MO*, STB Docket No. AB-566X, slip op. at 2 (STB served July 21, 2000); *Cent. R.R. of Indianapolis – Discontinuance of Serv. Exemption – In Clinton, Howard & Tipton Counties, IN*, STB Docket No. AB-289 (Sub-No. 4X), slip op. at 2 (STB served Jan. 15, 1999); *Perry County Port Auth. d/b/a Hoosier S. R.R. – Discontinuance Exemption – In Spencer County, IN*, STB Docket No. AB-554X, slip op. at 2 (STB served Oct. 19, 1998).

alter properties that are subject to STB jurisdiction that are 50 years old or older. *See also Manufacturers*, slip op. at 7; *Central Illinois*, slip op. at 3; *Missouri & Valley Park*, *supra* note 1, slip op. at 3 & n.3 (environmental and historic reporting not required where owner of line is required to continue to provide common carrier service over line).

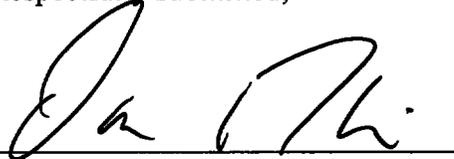
#### LABOR PROTECTION

The proposed discontinuance is subject to the standard labor protective conditions set forth in *Oregon Short Line R.R. – Abandonment – Goshen*, 360 I.C.C. 91 (1979), which would adequately protect the interests of adversely affected railroad employees, if any.

#### CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 to PGR's discontinuance of service over the Lines is not required to carry out the RTP. Moreover, the proposed transaction is of limited scope, and regulation is not required to protect shippers from an abuse of market power. Accordingly, the Board should grant the petition of PGR and WCL for exemption.

Respectfully submitted,



Thomas F. McFarland  
Thomas F. McFarland, P.C.  
208 South LaSalle Street, Suite 1890  
Chicago, IL 60604-1112  
(312) 236-0204

*Counsel for Progressive Rail,  
Incorporated*

David A. Hirsh  
James M. Guinivan  
HARKINS CUNNINGHAM LLP  
1700 K Street, N.W., Suite 400  
Washington, D.C. 20006-3804  
(202) 973-7600

Theodore K. Kalick  
CN  
Suite 500 North Building  
601 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-3608  
(202) 347-7840

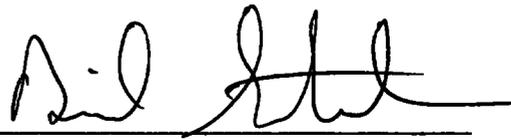
Thomas J. Healey  
CN  
17641 South Ashland Avenue  
Homewood, IL 60430-1339  
(708) 332-4381

*Counsel for Wisconsin Central Ltd.*

July 5, 2012

VERIFICATION

I, David Stuebner, declare under penalty of perjury that that the foregoing facts are true and correct. Further, I certify that I am qualified and authorized to verify this Petition for Exemption.



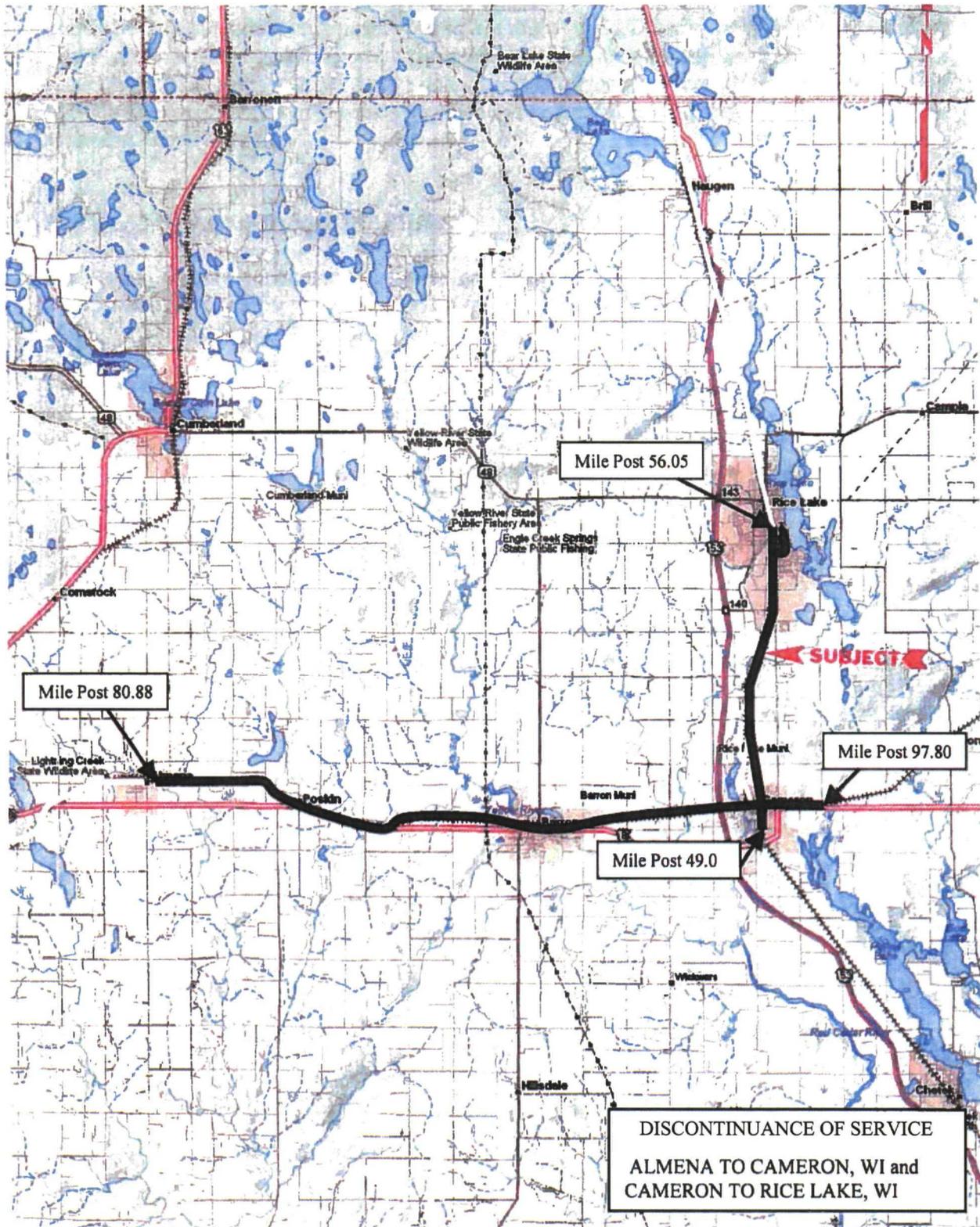
---

David Stuebner

Dated: ~~June~~ <sup>July</sup> 5, 2012

**EXHIBIT A**

**MAP**



SCALE 0 1 2 MILES

**EXHIBIT B**

**DRAFT FEDERAL REGISTER NOTICE**

SURFACE TRANSPORTATION BOARD

---

Docket No. AB 1101

---

PROGRESSIVE RAIL, INCORPORATED  
– DISCONTINUANCE OF SERVICE EXEMPTION –  
IN BARRON COUNTY, WISCONSIN

Notice of Petition for Exemption to Discontinue Service

On July 5, 2012, Progressive Rail, Incorporated (PGR) and Wisconsin Central Ltd. filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the discontinuance of service by PGR on (1) a line of railroad known as the Almena-Cameron Branch, extending from railroad milepost 80.88 at or near Almena to railroad milepost 97.80 at or near Cameron, which traverses through the 54805, 54812, and 54822 United States Postal Service ZIP Codes, a distance of 16.92 miles in Barron County, Wisconsin; and (2) a line of railroad known as the Rice Lake-Cameron Branch, extending from railroad milepost 49.0 at or near Cameron to railroad milepost 56.05 at or near Rice Lake, which traverses through the 54822 and 54868 United States Postal Service ZIP Codes, a distance of 7.05 miles in Barron County. The lines for which the discontinuance exemption was filed includes the stations of Almena (MP 81.0), Poskin (MP 85.4), Barron (MP 91.10), Cameron (MP 96.1), and Rice Lake (MP 56.05).

The lines do not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

This proceeding is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b).

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R.R. – Abandonment – Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. § 10502(b). A final decision will be issued by [\_\_\_\_\_], 2012.

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0305. [Assistance for the hearing

impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our website at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

Decided: \_\_\_\_\_, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**EXHIBIT C**

**CERTIFICATE OF PUBLICATION**

# Affidavit of Publication

(Pub. N.S. 07-04, 2012)

## Notice of Intent To Abandon or To Discontinue Rail Service

Progressive Rail Incorporated ("PGR") and Wisconsin Central Ltd. ("WCL") give notice that on or about July 5, 2012, they intend to file with the Surface Transportation Board, Washington, DC 20423, a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903, et seq., permitting the discontinuance of service by PGR on (1) a 16.92-mile rail line between railroad milepost 80.88 at or near Almena and railroad milepost 97.80 at or near Cameron, which traverses through United States Postal Service ZIP Codes 54805, 54812, and 54822 in Barron County, Wisconsin, and (2) a 7.05-mile rail line between railroad milepost 49.0 at or near Cameron and railroad milepost 56.05 at or near Rice Lake, which traverses through United States Postal Service ZIP Codes 54822 and 54868, in Barron County, Wisconsin. The proceeding has been docketed as No. AB 1101. PGR has been operating these lines since 2004 pursuant to a lease from WCL, the owner of the lines. The parties intend to terminate the lease and for WCL to resume direct freight rail service on the lines.

This discontinuance of service is exempt from environmental reporting requirements under 49 C.F.R. § 1105.6(c) and from historic reporting requirements under 49 C.F.R. § 1105.8(b).

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423-0001 [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on each of applicants' representatives [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance, public use or trails use may be directed to the Board's Office of Public Assistance, Governmental Affairs, and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on the applicants' representatives: Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112 (312-236-0204), and David A. Hirsh, Harkins Cunningham LLP, 1700 K Street, N.W., Suite 400, Washington D.C. 20006-3804 (202-973-7606).

STATE OF WISCONSIN  
ss  
BARRON COUNTY

James L. Bell, being first duly sworn, says: That he is the publisher of the Barron News-Shield, which is a weekly newspaper of a general circulation, printed and published in the City of Barron, in said County and State; that a notice of which the annexed is a printed copy taken from said newspaper, was printed and published in the full regular edition once in each week for one successive week(s), commencing and the first such publication being on the 4<sup>th</sup> day of July A.D., 2012 and ending and the last publication being on the 4<sup>th</sup> day of July A.D., 2012, being one such publication(s).

*James L. Bell*

Subscribed and sworn to before me this 5<sup>th</sup> day of

July A.D., 2012.

*Emily Mill*  
Notary Public, Barron County, Wis.  
Commission expires 9/13/15

FEES: 74 Lines 1 Col. 1 Time(s) \$ 46.28

First Insertion at 74 per .6254 lines \$ 46.28

Succeeding Insertion(s) at      per      lines \$     

Affidavit      1.00

Total \$ 47.28

CERTIFICATE OF SERVICE

This is to certify that, as required by 49 C.F.R. §§ 1152.50(d) and 1152.6(e), I have, this 5th day of July, 2012, served the preceding Petition for Exemption on the following by mailing each a copy, first-class postage prepaid:

Public Service Commission of Wisconsin  
610 North Whitney Way, 2nd Floor  
P.O. Box 7854  
Madison, Wisconsin 53707-7854

Transportation Engineering Agency  
Military Surface Deployment and Distribution Command  
ATTN: SDTE-SA (Railroads for National Defense)  
1 Soldier Way, Building 1900W  
Scott AFB, IL 62225

Chief, Conservation and Outdoor Recreation Division  
Rivers, Trails and Conservation Program  
National Park Service  
U.S. Department of the Interior  
1849 C Street, N.W. (Org Code 2220)  
Washington, DC 20240

Chief of the Forest Service  
U.S. Department of Agriculture  
Sidney R. Yates Building  
201 14th Street, S.W., 4th Floor  
Washington, DC 20250

  
Caroline M. Gignoux