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FILING FEE WAIVED

January 24, 2002

BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001



Re: Docket No. AB-39 (Sub-No. 12), St. Louis Southwestern Railway Company --
Abandonment-- In Smith and Cherokee Counties, TX

Dear Secretary Williams:

Enclosed for filing are an original and 10 copies of a "Petition to Reopen" filed on behalf of the State of Texas in the above- referenced proceeding. By this Petition, the State of Texas requests that the Board vacate a Certificate of Interim Trail Use and permit the abandonment of the line by the railroad. Please waive the filing fee in that the Petition is being filed on behalf of the State of Texas.

Two copies of the above-mentioned document are enclosed, which we request be date-stamped and returned to the undersigned. Thank you for your assistance in this matter.

Very truly yours,

Richard H. Streeter

Enclosure

cc: Glenn R. Price
David P. Young, Esq.

DCDS01 RHS 55369

FILED

JAN 25 2002

SURFACE
TRANSPORTATION BOARD

ENTERED
Office of the Secretary

JAN 25 2002

Part of
Public Record

Indianapolis

Fort Wayne

South Bend

Elkhart

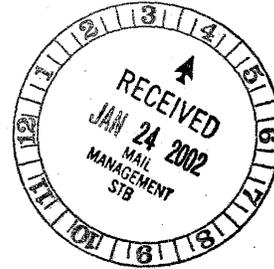
Chicago

Washington, D.C.

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Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20423



AB-39 (Sub-No. 12)

FILED

JAN 25 2002

SURFACE
TRANSPORTATION BOARD

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
-- ABANDONMENT--
IN SMITH AND CHEROKEE COUNTIES, TX

PETITION TO REOPEN

ENTERED
Office of the Secretary

JAN 25 2002

Part of
Public Record

Comes now the State of Texas, by and through its undersigned attorney, and files this Petition to Reopen pursuant to the provisions of 49 C.F.R. § 1152.29(c)(2). By filing this Petition, the State of Texas provides notice that it intends to terminate trail use and respectfully requests the Surface Transportation Board ("Board") to vacate the Certificate of Interim Trail Use ("CITU") issued by the Interstate Commerce Commission ("ICC") in the above-captioned proceeding on March 27, 1992. The ICC's grant of the CITU is reported in *St. Louis Southwestern Railway Company-Abandonment-In Smith and Cherokee Counties, TX*, 9 I.C.C.2d 406 (1992). It is requested that the CITU be vacated immediately.

Background

In 1997, the State of Texas acquired 103.24 acres from East Texas Rails To Trails ("ETRTT"). The acreage consisted of a rail corridor that runs through Cherokee and Smith Counties between Tyler and Jacksonville, Texas. ETRTT previously had acquired this property from St. Louis Southwestern Railway Company ("SSW") in 1992 by deed, which specifically states that the conveyance "is made subject to the terms of section 8(d) of the National Trails System Act, 16 U.S.C. subsection 1247(d)."

The corridor was the subject of multiple decisions issued by the ICC in its Docket No. AB-39 (Sub-No. 12), *St. Louis Southwestern Railway Company – Abandonment – In Smith and Cherokee Counties, TX*. By a Decision issued March 27, 1992 (9 I.C.C.2d 406), the ICC reopened a prior decision whereby SSW was authorized to abandon a 23.56-mile line of railroad between milepost 553.0, at or near Gresham, and milepost 576.56, at or near Jacksonville, in Smith and Cherokee Counties, TX.¹ The ICC vacated its prior decision “to the extent that it authorizes issuance of a certificate of abandonment of this line between milepost 553.0 (near Gresham) and milepost 572.0 (near Love’s Lookout).” *See* 9 I.C.C.2d at 414.

As the ICC subsequently explained in its November 10, 1992 Decision, which denied various petitions for reopening, rehearing and reconsideration, “we issued on March 27, 1992, a certificate of interim trail use or abandonment (CITU) under § 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and our regulations at 49 C.F.R. § 1152.29.” *St. Louis Southwestern Railway Company – Abandonment – In Smith and Cherokee Counties, TX*, 9 I.C.C.2d 429 (1992).

As the ICC had explained in its March 27, 1992 Decision, “[i]f interim trail use is implemented and the user subsequently seeks to terminate trail use, it must file a petition to reopen, referring to this decision and CITU by date and docket number, and request that the CITU be vacated on a specified date.” *St. Louis Southwestern Railway Company – Abandonment – In Smith and*

¹ The ICC’s initial decision finding that the public convenience and necessity permit abandonment was dated December 5, 1988. That Decision is published as Appendix A to the ICC’s Decision in ICC Docket No. AB-39 (Sub-No. 12), *St. Louis Southwestern Railway Company – Abandonment – In Smith and Cherokee Counties, TX, supra*, 9 I.C.C.2d at 416-427. *See also*, Appendix B to the ICC’s Decision in ICC Docket No. AB-39 (Sub-No. 12), *St. Louis Southwestern Railway Company – Abandonment – In Smith and Cherokee Counties, TX, supra*, 9 I.C.C.2d at 428, which is the Certificate of Abandonment issued January 26, 1989, by the Director, Office of Proceedings.

Cherokee Counties, TX, supra, 9 I.C.C.2d at 415. It is respectfully submitted that the instant petition fully complies with this condition.

Pursuant to the ICC's orders, in 1992, ETRTT reached an interim trail use agreement with SSW, pursuant to which ETRTT assumed full responsibility for management, legal liability arising out of the transfer or use, and legal liability for the payment of any and all taxes that may be levied or assessed. Moreover, ETRTT acquired the fee simple title to all but a limited portion of the involved corridor. In 1997, ETRTT conveyed the entirety of its interests in this property to the State of Texas, which assumed responsibility for the trail as of the date of its acquisition of ETRTT's interests. Unfortunately, the parties to the transaction between ETRTT and the State of Texas inadvertently failed to give notice of the sale to the Board, pursuant to 49 C.F.R. § 1152.29(f).

Having acquired ETRTT's interests, and having determined that it now wishes to vacate the CITU, the State of Texas, as the successor-in-interest to ETRTT, requests that the Board:

- (i) waive retroactively the requirements set forth at 49 C.F.R. § 1152.29(f), which required ETRTT and the State of Texas jointly to give notice to the Board of the transfer of interest and for the Board to issue an appropriate replacement CITU to the State of Texas;
- (ii) vacate the outstanding CITU, pursuant to the provisions of 49 C.F.R. § 1152.29(c); and
- (iii) issue a decision permitting the immediate abandonment of the 23.56-mile line of railroad between milepost 553.0, at or near Gresham, and milepost 576.56, at or near Jacksonville, in Smith and Cherokee Counties, TX.

To satisfy the requirements of 49 C.F.R. § 1152.29(c)(2), the Board should send copies of its decision permitting the immediate abandonment for the involved portion of the right-of-way to the following entities:

(i) The abandonment exemption applicant
St. Louis Southwestern Railway Company
c/o Union Pacific Railroad Company
David P. Young, Esq.
Environmental Counsel
Room 830
1416 Dodge Street
Omaha, Nebraska 68179

(ii) The owner of the right-of-way
The State of Texas
c/o Richard H. Streeter
Barnes & Thornburg
750 17th Street, N.W., Suite 900
Washington, D.C. 20006

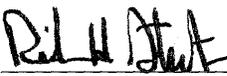
Glenn R. Price
Right of Way Administrator
Texas Department of Transportation
Tyler District
2709 W. Front Street
Tyler, Texas 75702

(iii) The current trail user
The State of Texas
c/o Richard H. Streeter
Barnes & Thornburg
750 17th Street, N.W., Suite 900
Washington, D.C. 20006

Glenn R. Price
Right of Way Administrator
Texas Department of Transportation
Tyler District
2709 W. Front Street
Tyler, Texas 75702

Should further information be required, please contact the undersigned.

Respectfully submitted,

By: 
Richard H. Streeter
BARNES & THORNBURG
750 17th Street, N.W.
Suite 900
Washington, D.C. 20006
(202) 408-6933

Counsel for the State of Texas

Dated: January 24, 2002

CERTIFICATE OF SERVICE

I, Richard H. Streeter, do hereby certify that a true copy of the foregoing Petition to Reopen was served this 24th day of January, 2002, by first-class mail, postage prepaid, on the following:

St. Louis Southwestern Railway Company
c/o Union Pacific Railroad Company
David P. Young, Esq.
Environmental Counsel
Room 830
1416 Dodge Street
Omaha, Nebraska 68179



Richard H. Streeter