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**FILED**

DEC - 5 2008

**SURFACE  
TRANSPORTATION BOARD**



December 5, 2008

BY HAND-DELIVERY

The Honorable Anne K. Quinlan, Esq  
Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

Re Finance Docket No. 35095, The Alaska Railroad Corporation – Petition For Exemption To Construct And Operate A Rail Line Extension to Port MacKenzie, Alaska

Dear Acting Secretary Quinlan

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of The Alaska Railroad Corporation's Petition for Exemption along with a check in the amount of \$74,900 for the filing fee. Also enclosed is a disk containing the text of the filing in Word format.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files. Please let me know if you have any questions. Thank you for your assistance.

Sincerely yours,

*Adrian L. Steel, Jr*  
Adrian L. Steel, Jr

Enclosures

cc Sarah Palin, Governor, State of Alaska  
I. co von Scherben, P.F., L.S., M.B.A.,  
Kathryn Kusske Floyd, Esq

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**SURFACE  
TRANSPORTATION BOARD**

224721



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 35095**

**The Alaska Railroad Corporation – Petition For Exemption  
To Construct And Operate A Rail Line  
Extension to Port MacKenzie, Alaska**

**ENTERED  
Office of Proceedings**

**DEC - 5 2008**

**Part of  
Public Record**

Pursuant to 49 U S C § 10502, Alaska Railroad Corporation ("ARRC") hereby petitions the Surface Transportation Board ("Board") for an exemption from the prior approval requirements of 49 U S C § 10901 for the construction and operation by ARRC of approximately 30 to 45 miles of new rail line connecting the Matanuska-Susitna Borough's Port MacKenzie (or "Port") in south-central Alaska to a point on the ARRC main line between Wasilla and north of Willow, Alaska. The proposed Port MacKenzie Rail Extension (or "Project") would provide freight services between the Port and Interior Alaska and would support the Port's continuing development as an intermodal and bulk material resources export and import facility. The Port is owned by the Matanuska-Susitna Borough ("MSB"), and MSB is a co-sponsor of the Project.

The exemption would be subject to the completion of environmental review by the Board's Section of Environmental Analysis ("SEA")

This Petition is supported by the attached Verified Statement of Patrick K. Gamble, President and Chief Executive Officer of ARRC

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## **INTRODUCTION**

As established below, the goals of the Rail Transportation Policy will be furthered by exempting the proposed line from regulation under Section 10901. The transaction is clearly limited in scope. It involves the straightforward construction and operation of approximately 30 to 45 miles of new rail line. Further, regulation is not needed to protect shippers from the abuse of market power. Indeed, as the Board and its predecessor, the Interstate Commerce Commission ("ICC"), have often recognized, the construction of new rail lines provides rail options to shippers and enhances competition. Accordingly, under the standards for exemption set forth in Section 10502, this Petition should be granted.

## **BACKGROUND**

### **A. *Petitioner***

ARRC is a Class II regional rail carrier incorporated in Alaska and headquartered in Anchorage, Alaska. ARRC provides freight and passenger services over a 470-mile main line to communities from the Gulf of Alaska to the greater Fairbanks area in the interior of the state. ARRC is owned by the State of Alaska, and one component of ARRC's mission statement states that it should foster the development of the state's economy. As part of that effort, ARRC continuously seeks out and evaluates opportunities to expand and improve transportation infrastructure and services within the state.

### **B. *Description and Purpose of Proposed Line and Planned Operations***

The purpose of the Project is to establish a rail link between the Port and the ARRC rail system, providing customers and shippers with rail transportation between the Port and Interior Alaska. The Port is a deepwater facility that lies about 30 miles southwest of Wasilla and 5 miles north of Anchorage across Knik Arm. Capable of serving large ships (such as Cape Class vessels), the deep draft dock offers access to thousands of upland and tideland acres. The Port

operates a bulk storage, transport, and processing facility. Presently, the only surface mode of freight transport available to the Port is by truck.

ARRC's proposal to construct and operate the new rail line would satisfy the need for an economic transportation alternative for the movement of bulk materials, intermodal containers and other freight to and from the Port and support ARRC's mission of fostering the development of Alaska's economy by integrating railroad development with rail belt community development plans.

As reflected on the map attached as Exhibit A to Mr. Gamble's Verified Statement, the proposed rail line would extend approximately 30 to 45 miles, depending on the route(s) approved, from the Port to ARRC's existing main line between Wasilla and north of Willow, Alaska. Major elements of the proposed Project would include a 200-foot-wide right-of-way, crossings over local roads, streams, trails, and utility corridors, sidings, and ancillary facilities.

ARRC will operate the line exclusively and will assume and bear all common carrier obligations. ARRC intends to offer common carrier and contract service to all shippers located in cities and in adjoining areas that access the new line. ARRC will own the right-of-way.

The expected traffic over the line will vary, depending on the success ARRC has in marketing its transportation offerings. The anticipated train traffic would be two trains daily on average, with one train of 40 to 80 cars per day traveling in each direction. Actual train sizes and service patterns will, however, depend on the demand for rail service. The rail traffic will consist primarily of bulk freight materials moving to and from the Alaska interior.

#### **D. *Environmental Review***

Representatives of ARRC have consulted with SEA on the environmental review process. By letter dated November 21, 2007, SEA granted ARRC's request for a waiver of the required six-month notice to SEA. On February 12, 2008, SEA issued a notice of intent to prepare an

EIS, notice of availability of draft scope of study for the EIS and, a notice of meetings and opportunity for public comment (73 Fed Reg 8106 (Feb 12, 2008)) Public meetings were held on March 3, 4, 5, 6, 10 and 11, 2008, at various locations in Alaska Extensive field work was conducted in 2007 by ARRC and SEA's third party contractor to gather environmental data Additional field work was completed in the summer of 2008

ARRC submitted a report to SEA in January 2008 that compared and evaluated various route alternatives It is anticipated that SEA, in consultation with the cooperating agencies, will issue a final scope of study that will identify the alternative to be carried forward in the Draft EIS for the project

## **DISCUSSION**

### ***A. The Proposed Construction and Operation are Presumptively in the Public Interest***

As a result of the liberalization of the "public convenience and necessity" standard by the ICC Termination Act of 1995, the Board has adopted a general presumption that construction projects will be approved *See Class Exemption for the Construction of Connecting Track Under 49 U.S.C. 10901, 1 S.T.B. 75, 79 (1996), accord Dakota, Minnesota & Eastern R.R. Corp Construction into the Powder River Basin, Fin Dkt No 33407, at 17 (Dec 10, 1998)*

As the Board has stated

Finding that a shipper sustained or is likely to sustain injury from an abuse of market power by its present carrier is not a prerequisite for approval of a build-out On the contrary, in enacting the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, Congress intended to facilitate rail construction by changing the statutory standard from requiring approval if the agency finds that a project is consistent with the public convenience and necessity (PC&N) to requiring approval unless the agency finds the project is inconsistent with the PC&N Under this new standard, proposed rail construction projects are to be given the benefit of the doubt

*The Burlington Northern and Santa Fe Railway Co — Construction and Operation Exemption*  
— *Seadrift and Kamey, TX*, Fin Dkt No 34003, at 4 (June 19, 2001) (citation omitted)

**B. *The Proposed Construction and Operation Meet the § 10502 Exemption Criteria for Line Construction and Operation Under § 10901***

Construction and operation of a new rail line require prior Board approval pursuant to 49 U S C § 10901 Under 49 U S C § 10502(a), however, the Board must exempt such construction from the prior approval requirements of Section 10901 if it finds that (1) continued regulation is not necessary to carry out the Rail Transportation Policy of 49 U S C § 10101, and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power

The legislative history of the exemption provisions, as well as ICC, Board and court decisions, demonstrate that the Board should apply the exemption provision broadly, and that the proposed line is the type of transaction for which the exemption provision was designed *See, e g , American Trucking Ass 'ns v ICC , 656 F 2d 1115, 1119 (5th Cir 1981) (the ICC is charged with the responsibility of actively pursuing exemptions for transportation and service that comply with the section's standards), H R Rep No 96-1430, at 105 (1980) (the ICC is charged with removing "as many as possible of the Commission's restrictions . . . .")*

As explained in detail below, the proposed rail line construction and operation comply with the Section 10502 exemption criteria and accordingly should be exempted from the requirements of obtaining Board approval under Section 10901

***1. An Exemption Will Promote the Rail Transportation Policy***

Regulation of the construction and operation of this approximately 30 to 45 mile rail line is not necessary to carry out the Rail Transportation Policy expressed in Section 10101 Rather, granting an exemption (as opposed to subjecting the proposed project to burdensome regulation)

will promote significant provisions of the Rail Transportation Policy and will not run counter to any of the Rail Transportation Policy's goals

First, the granting an exemption for the construction of the proposed rail line is consistent with the mandate of Sections 10101(1), 10101(4), and 10101(5) that the Board ensure the development and continuation of a sound rail transportation system with effective competition and coordination between rail carriers that will allow competition and the demand for service to establish reasonable rates and service terms. Specifically, the proposed line will provide the area with a freight transportation option and will enhance intermodal competition. Second, consistent with Sections 10101(2) and 10101(7), an exemption will minimize the need for federal regulatory control over the rail transportation system and reduce regulatory barriers to entry. Specifically, an exemption here will promote these policies by minimizing the time and administrative expense associated with the construction and commencement of operations. Regulatory barriers to new capacity and infrastructure improvements in particular should be minimized where possible in order to promote and maintain stable economic growth in this sector of the economy.

The Board and its predecessor the ICC have repeatedly found that rail construction and operation projects promote the Rail Transportation Policy by providing rail service options, allowing for competition, and encouraging the provision of more efficient transportation service. *See, e.g., Itasca County Regional Rail Authority – Petition for Exemption – Construction of a Rail Line in Itasca County, MN*, Fin Dkt No 34992, at 3 (Sept 8, 2008), *Southwest Gulf R R Co – Construction and Operation Exemption – Medina County, TX*, Fin Dkt No 34284, at 2 (May 19, 2003), *The Burlington Northern and Santa Fe Railway Co – Construction and Operation Exemption – Seadrift and Kamey, TX, supra*, at 4, *Entergy Arkansas and Entergy Rail*

*– Construction and Operation Exemption – White Bluff to Pine Bluff, AR, Fin Dkt No 33782 (May 4, 2000), Missouri Pacific R R Co – Construction and Operation Exemption – Harris and Chambers Counties, TX, Fin Dkt No 32571, at 4 (June 30, 1995), Gateway Western Ry Co – Construction Exemption – St Clair County, IL, Gateway Western Ry Co – Petition Under 49 U S C 10901(d), Fin Dkt Nos 32158 and 32158 (Sub-No 1), at 10 (May 11, 1993) (noting that the Board has “made findings in a series of construction [exemption] cases that the rail transportation policy favors the construction of new rail lines”), accord Burlington Northern R R Co – Construction and Operation Exemption – Macon and Randolph Counties, MO, 9 I C C 2d 1161, 1166-1169 (1993), aff’d sub nom Missouri Mining, Inc v ICC, 33 F 3d 980 (8th Cir 1994)*

Additionally, in today’s competitive environment, the market adequately determines the value of a potential rail construction project. As a result, there is no need for regulatory oversight to determine if the proposed project is economically sound and meets a transportation need. See *Illinois Central R R Co – Construction and Operation Exemption – In East Baton Rouge Parish, LA, Fin Dkt No 33877 (May 25, 2001), Missouri Pacific R R Co – Construction and Operation Exemption – Harris and Chambers Counties, TX, supra, at 4*

The proposed line construction is a straightforward transportation project. It involves approximately 30 to 45 miles of new track. Construction and operation of the line raise no concerns which might justify Board scrutiny under Section 10901. As with most construction and operation projects, an exemption from regulatory review (excepting environmental review and regulation) will advance a number of goals of the Rail Transportation Policy, including minimizing the need for federal regulatory control, ensuring the development and continuation of a sound rail transportation system, allowing competition and demand for service to establish

transportation rates and service terms, and encouraging the efficient management of railroads  
None of the goals of the Rail Transportation Policy will be hindered by the granting of this  
Petition

In conclusion, formal and potentially protracted Board approval pursuant to Section 10901 is not necessary to carry out the goals of the Rail Transportation Policy. In fact, to require such approval by means other than exemption, with its attendant expense and risk of delay, will undermine the aims of the Rail Transportation Policy.

**2. *The Transaction is Limited in Scope and Regulation is Not Needed to Protect Shippers from the Abuse of Market Power***

The second test for exemption is stated in the alternative — either the transaction must be of limited scope or the Board must find that regulation of the transaction is not needed to protect shippers from the abuse of market power. Although required to satisfy just one of these alternatives, the proposed new line satisfies both.

First, the proposed construction is limited in scope. The entire amount of rail line to be constructed and operated is approximately 30 to 45 miles in total length. The line will be located entirely within the State of Alaska and will provide a direct connection between two points. There will be no regional or national impacts.

Second, the proposed line is designed in principal part to enhance rail service to shippers, and therefore regulation of the construction and operation is not needed to protect shippers from the abuse of market power. The proposed line, when completed, will provide freight shippers located along the line with rail service for the first time and with increased intermodal competition with commercial freight by truck. See, e.g., *Itasca County Regional Rail Authority -- Petition for Exemption – Construction of a Rail Line in Itasca County, MN, supra* at 3 (“the proposed rail line will provide the area with additional transportation options and enhanced

competition”), *Ameren Energy Generating Company – Construction and Operation Exemption – In Coffeen and Walshville, IL*, Fin Dkt No 34435, at 4 (“the proposed rail line will provide the area with additional transportation options and enhanced competition”), *Entergy Arkansas and Entergy Rail – Construction and Operation Exemption – White Bluff to Pine Bluff, AR. supra*, at 7 (“the proposed transaction will provide an additional rail transportation option and thus will enable [the shipper] to realize the benefits of increased railroad competition”), *Southern Electric R R Co – Construction and Operation Exemption – West Jefferson, AL. supra*, *Southern Gulf Ry Co – Construction and Operation Exemption – In Calcasieu Parish, LA*, Fin Dkt No 32321, at 4 (Sept 9, 1993) (construction and operation of a new rail line to serve a utility coal shipper held not to subject shippers to carrier market power abuses)

In this regard, ARRC’s petition is similar to a petition filed by Southwest Gulf Railroad Company. There, the Board exempted SGR’s construction and operation of a new line to enable a proposed quarry to receive rail service. In so doing, the Board stated

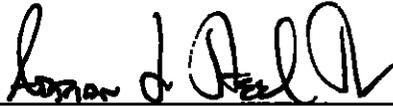
Regulation of the transaction is not necessary to protect shippers from the abuse of market power. Rather, the proposed transaction will enhance competition by providing Vulcan with a rail transportation option to go along with existing motor carrier options. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

*Southwest Gulf R R Co – Construction and Operation Exemption – Medina County, TX. supra*,  
at 3

**CONCLUSION**

For the foregoing reasons, ARRC respectfully requests that the Board grant this Petition for Exemption to authorize ARRC to construct and operate the approximately 30 to 45 miles of rail line without the need of a full application pursuant to 49 U.S.C. § 10901

Respectfully submitted,



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Adrian L. Steel, Jr  
Kathryn Kusske Floyd  
Mayer Brown LLP  
1909 K Street, NW  
Washington, DC 20006  
(202) 263-3237

Attorneys for Alaska Railroad Corporation

December 5, 2008

**Verified Statement  
of  
Patrick K. Gamble**

**1 My name is Patrick K. Gamble. I am President and Chief Executive Officer of Alaska Railroad Corporation ("ARRC"). My office address is 327 W. Ship Creek Ave., Anchorage, AK 99501.**

**2. In my position as President and CEO, I am responsible for the overall operation of ARRC as well as for planning the future rail needs of the State of Alaska.**

**3 I retired as a four star General from the United States Air Force after a career as a fighter pilot, including a combat tour during Vietnam as a Forward Air Controller ("FAC"). I have had 17 years of executive level leadership in business and government service including duty as the director of NATO operations and logistics, and director of United States Air Force air and space operations. I served as the top Air Force commander in the Pacific region and was responsible for operations, maintenance, planning, and budgeting of fourteen military installations with almost 50,000 employees and 400 aircraft. I joined ARRC in 2001, and I have made safety, employee quality of life, and business excellence my chief priorities. I graduated from Texas A&M University in mathematics and earned my MBA from Auburn University.**

**4 The purpose of this Verified Statement is to support the Petition for Exemption filed by ARRC for the construction and operation by ARRC of approximately 30 to 45 miles of new rail line connecting the Matanuska-Susitna Borough's ("MSB") Port MacKenzie in south-central Alaska to a point on the ARRC main line between Wasilla and north of Willow, Alaska. Specifically, I will address the purpose and need for the new line, and I will describe the routing, placement and operation of the line. A map showing the proposed new line is attached hereto as Exhibit A. (The map, which shows the alternatives under consideration, is taken from the**

January 2008 Preliminary Environmental and Alternatives Report that was submitted to the Section of Environmental Analysis of the Surface Transportation Board.)

5 ARRC is a Class II regional rail carrier incorporated in Alaska and headquartered in Anchorage, Alaska. ARRC provides freight and passenger services over a 470-mile main line to communities from the Gulf of Alaska to the greater Fairbanks area in the interior of the state. ARRC is owned by the State of Alaska, and one component of ARRC's mission statement says it should foster the development of the state's economy. As part of that effort, ARRC continuously seeks out and evaluates opportunities to expand and improve transportation infrastructure and services within the state.

6. ARRC proposes to construct and operate approximately 30 to 45 miles of new rail line connecting the Matanuska-Susitna Borough's Port MacKenzie (or "Port") in south-central Alaska to a point on the ARRC main line between Wasilla and north of Willow, Alaska. The Port is a deepwater facility that lies about 30 miles southwest of Wasilla and 5 miles north of Anchorage across Knik Arm. Capable of serving large ships (such as Cape Class vessels), the deep draft dock offers access to thousands of upland and tideland acres. The Port operates a bulk storage, transport, and processing facility. Presently, the only surface mode of freight transport available to the Port is by truck.

7. The Project would allow ARRC to provide freight services between the Port and Interior Alaska. It also would support the Port's continuing development as an intermodal and bulk material resources export and import facility. The Port that would be served by the new rail line is owned by MSB. MSB supports the Project.

8. As reflected on the map attached as Exhibit A, the proposed rail line would extend approximately 30 to 45 miles, depending on the route(s) approved, from the Port to

ARRC's existing main line between Wasilla and north of Willow. Major elements of the proposed Project would include a 200-foot-wide right-of-way; crossings over local roads, streams, trails, and utility corridors, sidings; and ancillary facilities.

9. ARRC will operate the line exclusively and will assume and bear all common carrier obligations. ARRC intends to offer common carrier and contract service to all shippers located in cities and in adjoining areas that access the new line. ARRC will own the right-of-way.

10. The expected traffic over the lines will vary, depending on the success ARRC has in marketing its transportation offerings. The anticipated train traffic would be two trains daily on average, with one train of 40 to 80 cars per day traveling in each direction. Actual train sizes and service patterns will, however, depend on the demand for rail service. The rail traffic will consist primarily of bulk materials moving to and from the Alaska interior.

**VERIFICATION**

I, PATRICK K GAMBLE verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on 26 Nov, 2008.

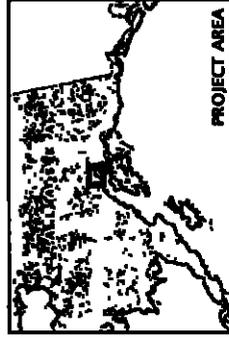
PK Gamble  
Patrick K Gamble

**Figure 3-2**  
**ALTERNATIVES UNDER EVALUATION**



**LEGEND**

- Preliminary Alternatives\***
- Mac East
  - Mac West
  - Conn 1
  - Conn 2
  - Conn 3
  - Houston
  - Houston North
  - Houston South
  - Willow
  - Big Lake
- ARRC Track
- ARRC Milepost
- Highway
  - Medium Rd
  - Minor Rd
  - Iditarod Trail
  - City Boundary
  - Park or Refuge



\*These lines generally represent corridors which are subject to further refinement.

This map was prepared by the author for the project described above. It is not intended to be used for any other purpose. The author assumes no responsibility for any errors or omissions in this map. The user of this map should consult the project description for more information.



Date: November 5, 2007  
 Project: Alaskan State Plans Zone 4 (MAD 83)  
 Author: ARRC Alaska Inc.  
 Source: ARRC, HDA, HDA Inc.  
 1848 CT, 1001 Tammun, USA



**CERTIFICATE OF SERVICE**

I do hereby certify that copies of Alaska Railroad Corporation's Petition For An Exemption To Construct And Operate A Rail Line Extension to Port MacKenzie, Alaska are being served on the following by First-Class Mail, postage prepaid

Sarah Palin, Governor  
State of Alaska  
P O Box 110001  
Juneau, AK 99811-0001

Leo von Scheben, P E , L S , M B A  
Office of the Commissioner  
Transportation & Public Facilities  
State of Alaska  
3132 Channel Drive  
PO Box 112500  
Juneau, AK 99811-2500

  
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