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WASHINGTON DC 20036 1609  
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Office of Proceedings

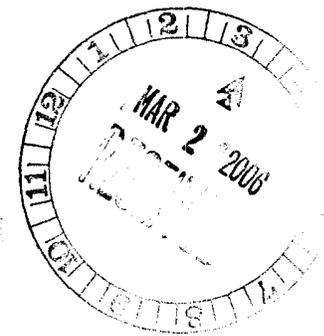
FILED

MAR - 1 2006

Part of  
Public Record

TRANSPORTATION BOARD

March 2, 2006



**BY HAND DELIVERY**

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423

FILED

MAR 2 2006

TRANSPORTATION BOARD

Re: STB Finance Docket No. AB-992X, Atlantic & Pacific Railroad and Transportation Company – Discontinuance of Service Exemption – In Rice County, KS

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and 10 copies of the petition for exemption of Atlantic & Pacific Railroad and Transportation Company pursuant to 49 C.F.R. § 10501. Also enclosed is a check in the amount of \$ 5,200 to cover the filing fee for this proceeding.

Please acknowledge receipt of this letter by date-stamping the enclosed acknowledgment copy and returning it to our messenger.

Sincerely,

Rose-Michele Nardi

Enclosures

ENTERED  
Office of Proceedings

215907



BEFORE THE  
SURFACE TRANSPORTATION BOARD

Part of  
Public Record

ATLANTIC & PACIFIC RAILROAD AND TRANSPORTATION COMPANY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN RICE COUNTY, KS

FILED  
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MAR 2 2006

STB FINANCE DOCKET NO. AB-992X

FILED

MAR - 2 2006

TRANSPORTATION BOARD

PETITION FOR EXEMPTION  
PURSUANT TO 49 C.F.R. § 10502

SURFACE  
TRANSPORTATION BOARD

Atlantic & Pacific Railroad and Transportation Company ("APR"), a class III carrier, hereby petitions the Surface Transportation Board ("Board") for exemption, pursuant to 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, to discontinue service over an approximately four-mile rail line in Rice County, Kansas.

**BACKGROUND**

APR leased from Kansas & Oklahoma Railroad ("KO"), a class III rail carrier and subsidiary of Watco Companies, Inc., an approximately four-mile rail line, extending from the point of interchange with KO's line at approximately milepost 87.0 at or near Chase, KS, to the point of interchange with KO's line at approximately milepost 91.0 at or near Silica, KS (the "Subject Line"). See STB Finance Docket No. 34451, *Atlantic & Pacific Railroad and Transportation Company - Lease and Operation Exemption - Line of Kansas & Oklahoma Railroad*, served July 20, 2004. APR seeks an exemption to discontinue service over the Subject Line.

Since A&P entered into the lease with K&O, no shipper has requested rail service from A&P and A&P has not performed any rail operations over the Subject Line. There are no active

shippers located on the Subject Line. Throughout the term of the lease, KO, as a class III lessor, retained a residual common carrier obligation to provide rail service over the line. Upon the discontinuance by APR of rail service over the Subject Line, KO, as owner of the line, will continue to have the right and obligation to provide common carrier rail service over the Subject Line, should there be any future request for rail service.

#### **BASIS FOR EXEMPTION UNDER SECTION 10502**

Pursuant to 49 U.S.C. § 10903, a rail common carrier desiring to discontinue rail service must obtain the prior approval of the Board. However, the Board has authority to exempt certain transactions from this approval, pursuant to 49 U.S.C. § 10502(a), which provides:

- (a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the Board, to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part –
  - (1) is not necessary to carry out the transportation policy of section 10101 of this title; and
  - (2) either –
    - (A) the transaction or service is of limited scope; or
    - (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

Regulation of this discontinuance pursuant to section 10903 is unnecessary to carry out the policy set forth at section 10101, the discontinuance is of limited scope, and it will not subject any shippers to an abuse of market power. Thus, APR's proposed discontinuance satisfies the requirements of section 10502 and should be exempted from the Board's prior approval requirements.

A. *The Application of Section 10903 Is Not Necessary to Carry Out the Rail Transportation Policy*

The Board's prior review of APR's proposed discontinuance is unnecessary to carry out the rail transportation policy ("RTP") identified at 49 U.S.C. § 10101. None of the objectives of the RTP will be adversely affected by the exemption. In fact, by exempting this transaction, the Board would further certain of the RTP's objectives. Granting the exemption would serve to minimize government regulation in the railroad industry and regulatory barriers (including administrative expenses) associated with exit from the industry, and would result in the efficient handling of this proceeding. See 49 U.S.C. § 10101(2), (7) and (15).

B. *This Transaction Is Of Limited Scope*

In the instant case, the number of affected shippers and the traffic volume is zero. Further, the Subject Line is only four miles long, and is located in a single county. Thus, the proposed discontinuance is a limited scope transaction. See, e.g., *Florida West Coast Railroad Company- Abandonment Exemption- Gilchirst and Levy Counties, FL*, Docket No. AB-347 (Sub-No.1X) (Jan. 6, 1992).

C. *This Transaction Will Not Result In An Abuse Of Market Power.*

If the Board finds that the transaction is of limited scope, the Board need not determine whether the proposed discontinuance of service will result in an abuse of market power. Nevertheless, regulation of this transaction also is not needed to protect shippers from an abuse of market power. There are currently no active shippers located on the line. Moreover, KO will continue to have the common carrier obligation to serve any shippers who might, in the future, request rail service over the Subject Line.

## **MAP**

A map of the Subject Line is attached hereto as Exhibit A.

## **DRAFT FEDERAL REGISTER NOTICE**

A draft Federal Register notice is attached hereto as Exhibit B.

## **CERTIFICATE OF SERVICE AND PUBLICATION**

A Certificate of Service and Publication is attached hereto as Exhibit C.

## **FEDERALLY-GRANTED RIGHT-OF-WAY**

APR is not the owner of the Subject Line and does not have in its possession information on whether the Subject Line contains federally granted right-of-way. Any documentation in APR's possession concerning title will be made available to those requesting it.

## **ENVIRONMENTAL REPORT AND HISTORIC REPORT**

This discontinuance proceeding does not involve the abandonment of any rail lines. Because APR has not performed any rail operations over the Subject Line during the lease term, the discontinuance of rail service will not exceed any of the thresholds identified in 49 C.F.R. § 1105.7(e)(4) or (e)(5). *See* 49 C.F.R. § 1105.6(c)(2). In addition, because APR is not the owner of the line and K&O will continue to have a common carrier obligation with respect to the line, the discontinuance will not result in any track salvage activities. Under these circumstances, this proceeding is exempt from environmental and historic reporting requirements. *See* STB Docket Nos. AB-32 (Sub-No. 93X) and AB-355 (Sub-No. 31X), *Boston and Maine Corporation – Discontinuance of Service Exemption – In Suffolk County, MA; Springfield Terminal Railway Company – Discontinuance of Service Exemption – In Suffolk*

*County, MA*, served June 14, 2005. *See also*, STB Docket No. AB-364 (Sub-No. 10X), *Mid-Michigan Railroad, Inc. – Discontinuance of Service Exemption – In Kent County, MI*, served October 14, 2005; STB Docket No. AB-1066X, *Central Illinois Railroad Company – Discontinuance of Service Exemption – In Peoria County, IL*, served Dec. 23, 2005 (proceeding subsequently stayed on other grounds; court action subsequently initiated).

#### LABOR PROTECTION

The interests of railroad employees of APR who may be adversely affected by the proposed discontinuance of service will be adequately protected by the labor protective conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

#### CONCLUSION

Application of the prior approval requirements of 49 U.S.C. § 10903 to the proposed discontinuance is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101. In addition, the proposed discontinuance is of limited scope and will not subject any shippers to abuse of market power. Because it has satisfied the requirements of 49 U.S.C. § 10502(a), APR requests an exemption for the proposed discontinuance of the Subject Line.

Respectfully submitted,



Rose-Michele Nardi  
Christine Y. Rim  
Weiner Brodsky Sidman Kider PC  
1300 Nineteenth Street, NW, Fifth Floor  
Washington, D.C. 20005-4797  
(202) 628-2000

Attorneys for:  
ATLANTIC & PACIFIC RAILROAD AND  
TRANSPORTATION COMPANY

Dated: March 2, 2006

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**ATLANTIC & PACIFIC RAILROAD AND TRANSPORTATION COMPANY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN RICE COUNTY, KS**

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**STB FINANCE DOCKET NO. AB-992X**

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**NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. § 1152.50**

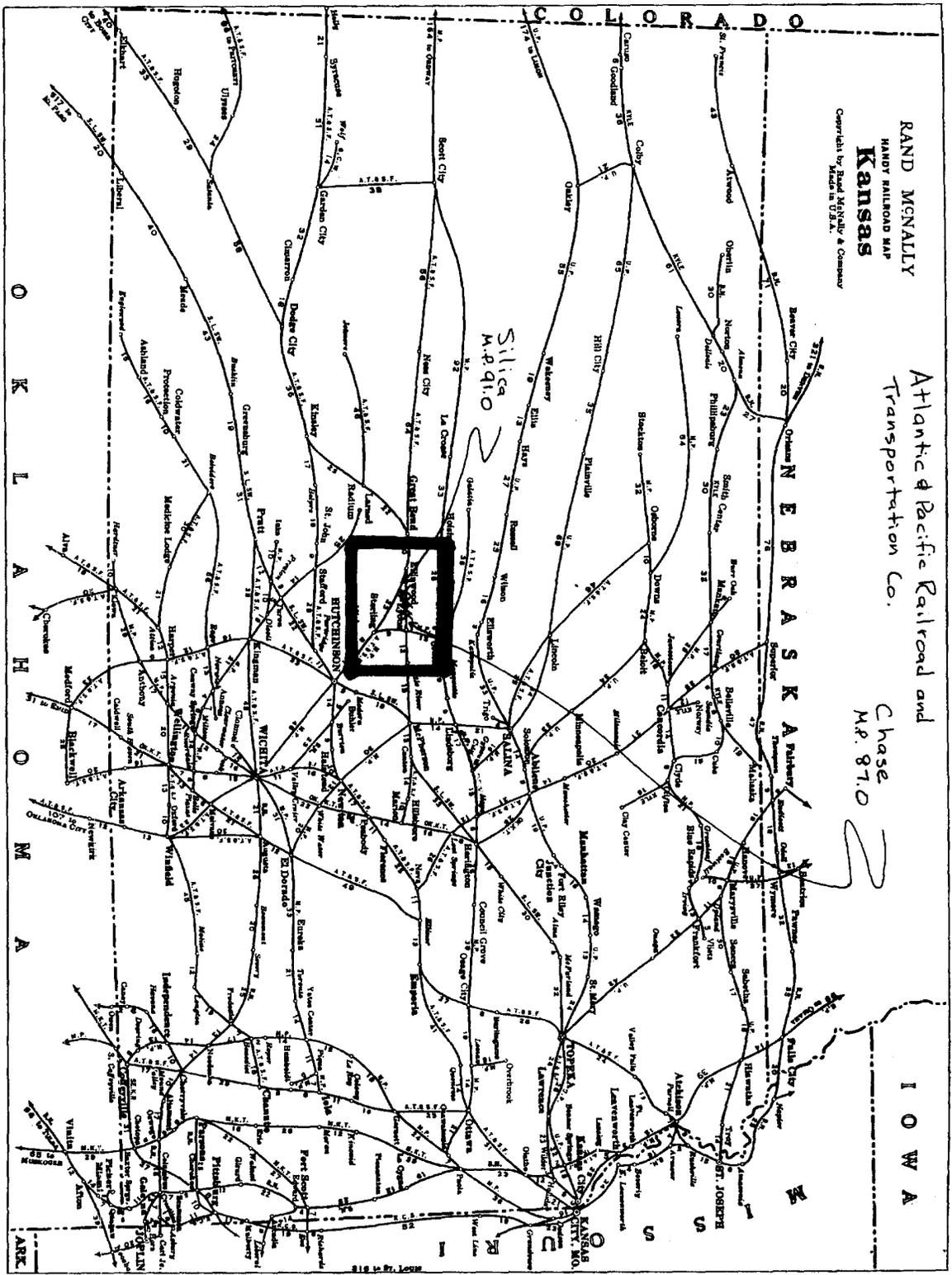
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**EXHIBIT A  
MAP OF SUBJECT LINE**

RAND McNALLY  
HANDY RAILROAD MAP  
**Kansas**  
Copyright by Rand McNally & Company  
Made in U.S.A.

Atlantic & Pacific Railroad and  
Transportation Co.

Chase  
M.P. 87.0



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**ATLANTIC & PACIFIC RAILROAD AND TRANSPORTATION COMPANY  
- DISCONTINUANCE OF SERVICE EXEMPTION -  
IN RICE COUNTY, KS**

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**STB FINANCE DOCKET NO. AB-992X**

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**PETITION FOR EXEMPTION  
PURSUANT TO 49 C.F.R. § 1152.60**

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**EXHIBIT B**

**DRAFT FEDERAL REGISTER NOTICE**

## DRAFT FEDERAL REGISTER NOTICE

STB No. AB-992X

### Notice of Petition for Exemption to Abandon or to Discontinue Service

On March 2, 2006, Atlantic & Pacific Railroad and Transportation Company ("APR") filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the discontinuance of service on a line of railroad, extending from the point of interchange with the line of Kansas & Oklahoma Railroad ("KO") at approximately milepost 87.0 (at or near Chase, KS) to the point of interchange with KO's line at approximately milepost 91.0 (at or near Silica, KS), which traverses through United States Postal Service ZIP Codes 67524, 67554, and 67573, a distance of approximately 4 miles in Rice County, Kansas.

APR is not the owner of the line and does not have information on whether the line contains federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

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

Any offer of financial assistance will be due no later than 10 days after service of a decision granting the petition for exemption. Because this is a discontinuance of service proceeding and not an abandonment, there will be no consideration of requests for trail use/railbanking or public use conditions.

Persons seeking further information concerning discontinuance procedures may contact the Surface Transportation Board or refer to the full discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis.

This discontinuance proceeding does not require any historic or environmental documentation.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**ATLANTIC & PACIFIC RAILROAD AND TRANSPORTATION COMPANY  
– SERVICE OF DISCONTINUANCE EXEMPTION –  
LINE OF KANSAS & OKLAHOMA RAILROAD**

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**STB FINANCE DOCKET NO. AB-992X**

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**PETITION FOR EXEMPTION  
PURSUANT TO 49 C.F.R. § 1152.60**

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**EXHIBIT C**

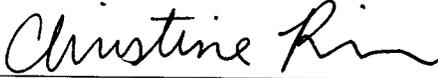
**CERTIFICATE OF SERVICE AND PUBLICATION**

**CERTIFICATE OF SERVICE AND PUBLICATION**

I hereby certify that (1) based on a certificate of publication attached hereto as Attachment 1, a newspaper notice alerting the public to the proposed discontinuance of service of the Subject Line was published in The Lyons News on February 14, 2006; (2) a copy of this petition for exemption was sent by first-class mail, postage prepaid, to the parties listed below on March 2, 2006.

- (1) Kansas Department of Transportation  
Office of Rail Affairs  
Dwight D. Eisenhower State Office Building  
700 SW Harrison Street, Second Floor Tower  
Topeka, KS 66603-3754  
Attn: John Maddox
  
- (2) Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604  
Attn: Dale Moore
  
- (3) MTMC-TEA  
Railroads for National Defense Program  
1720 Thimble Shoals Boulevard, Ste. 130  
Newport News, VA 23606-2574  
Attn: Director
  
- (4) National Park Service  
Midwest Regional Office  
601 Riverfront Drive  
Omaha, Nebraska 68102  
Attn: Ernest Quintana, Regional Director
  
- (5) Department of Interior  
National Park Service  
National Center for Recreation & Conservation  
1201 I Street, NW, 10th Floor, FMD-PFT  
Washington, D.C. 20240  
Attn: Lou Delorme

(6) U.S. Department of Agriculture  
Attn: Chief of the Forest Service  
201 14th Street, S.W.  
Washington, D.C. 20250

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Christine Y. Rim

**ATTACHMENT 1**  
**CERTIFICATE OF PUBLICATION**

STATE OF KANSAS

Rice

COUNTY

SS.

# Affidavit of Publication

(Published in The Lyons News  
February 14, 2006.)

### NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE

Atlantic & Pacific Railroad and Transportation Company ("APR") gives notice that on or about February 17, 2006, it intends to file with the Surface Transportation Board ("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 on an approximately 4-mile line of railroad extending from the point of interchange with the rail line of Kansas & Oklahoma Railroad ("KO") at approximately milepost 97.0 (at or near Chase, KS) to the point of interchange with KO's rail line at approximately milepost 91.0 (at or near Silica, KS), which traverses through United States Postal Service ZIP Codes 67524, 67554 and 67573 in Rice County, Kansas. The proceeding has been docketed as No. AB 992X.

Interested persons may make inquiries regarding environmental matters by writing to the Section of Environmental Analysis ("SEA"), Surface Transportation Board, Washington, DC 20423 or by calling SEA at 202-565-1545.

Appropriate offers of financial assistance to continue rail services can be filed with the Board. Requests for environmental conditions also can be filed with the Board. Because this is a discontinuance of service proceeding and not an abandonment, there will be no consideration of requests for trail use/rail banking or public use conditions. An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance) must be filed directly with the Board's Office of the Secretary, 1925 K Street, NW, Washington, DC 20423 [See 49 CFR 1104.1(a) and 1104.3(a)] and one copy must be served on applicant's representative [See 49 CFR 11.4.12(a)]. Questions regarding offers of financial assistance may be

directed to the Board's Office of Public Services at 202-565-1592. Copies of any comments or requests for conditions should be served on the applicant's representative: Rose-Michele Nardi, Weiner Brodsky Sidman Kider PC, 1300 19th Street, NW, Fifth Floor, Washington, D.C. 20036-1609.

**Shane Schneider**, being first duly sworn, deposes and says: That he is editor of the Lyons News, a twice weekly newspaper printed in the State of Kansas, and published in and of general circulation in Rice County, Kansas, with a general paid circulation on a twice weekly basis in Rice County, Kansas, and that said newspaper is not a trade, religious or fraternal publication.

Said newspaper is published Tuesdays and Fridays and has been published continuously and uninterruptedly in said county and state for a period of more than five years prior to the first publication of said notice; and has been admitted at the post office of Lyons, Kansas, in said county as second class matter.

That the attached notice is a true copy thereof and was published in the regular and entire issue of said newspaper for 1 consecutive Tuesday the first publication thereof being made as aforesaid on the 14 day of February, 2006, with subsequent publications being made on the following dates:

\_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_

Signed: Shane Schneider

D. CAUTIER  
Notary Public - State of Kansas  
7-23-08

Subscribed and sworn to before me this 24 day of February, 2006.

D. Cautier  
Notary Public's Signature

My commission expires: 7-23-08

Publication Fee \$ 53.55

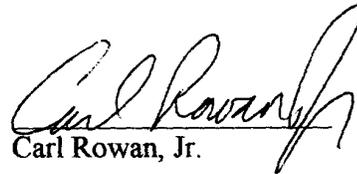
Affidavit, Notary's Fee \$ .50

Additional copies @ \$ \_\_\_\_\_

Total Publication Fee \$ 54.05

**VERIFICATION**

I, Carl Rowan, Jr., President of Atlantic & Pacific Railroad and Transportation Company, certify under penalty of perjury that the foregoing petition for exemption is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to cause this petition for exemption to be filed.

  
Carl Rowan, Jr.

Dated: March 2, 2006