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March 6, 2006

VIA E-FILING

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

RE: Class Exemption for Expedited Abandonment Procedure for Class II and Class III Railroads, STB Ex Parte No .647

Dear Secretary Williams:

Attached for filing please find the Comments of the State of Washington in response to the Advance Notice of Proposed Rule-making published in 71 Federal Register 3030-3033 (2006). Following the publishing of the notice on January 19, 2006, both the Washington State Department of Transportation (responsible for overseeing the State rail plan) and the Washington Utilities and Transportation Commission (responsible for representing the State abandonment proceedings before the Surface Transportation Board) each filed a notice of intent to participate in this rulemaking process. The attached Comments are being filed jointly and represent the position of the State of Washington.

We are filing electronic versions of these comments today and mailing copies to the individuals on the service list for this proceeding posted on the Surface Transportation Board website.

Please contact me if you have any questions.

Sincerely,

MARK S. LYON
Assistant Attorney General
(360) 586-0641

MSL:mjc
Attachment

cc: Barbara Ivanov, WSDOT
Chris Rose, WUTC



BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 647

CLASS EXEMPTION FOR EXPEDITED ABANDONMENT PROCEDURE FOR
CLASS II AND CLASS III RAILROADS

COMMENTS OF THE STATE OF WASHINGTON, WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION AND WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

MARCH 6, 2006

I. INTRODUCTION

The Washington State Department of Transportation (WSDOT)¹ and the Washington Utilities and Transportation Commission (WUTC)² (hereafter, State of Washington) submit these comments in opposition to the proposed rules to establish a new class exemption for expedited abandonment of rail lines for Class II and Class III railroads.³ The best approach to determining whether an abandonment or discontinuance is consistent with the public interest is to require each railroad to file under the Surface Transportation Board's current procedures. These procedures allow the development of a thorough factual record and input from all affected interests, and do not foreclose consideration of all relevant information in favor of broad exemptions.

¹ WSDOT is the agency of the State of Washington designated as responsible for the State's rail plan pursuant to RCW 47.76.210 and RCW 47.76.240.

² WUTC is designated authority to intervene in proceedings on abandonment when necessary to protect the State of Washington's interests. RCW 47.76.240(2). These comments also include concerns from Washington's Department of Archeology and Historic Preservation (DAHP).

³ Advance Notice of Proposed Rulemaking, 71 Federal Register 3030 (January 19, 2006)(hereafter, Advance Notice)

Class II and Class III railroads provide a vital service to the transportation system of the nation, the states and local communities. Abandonment of rail lines and discontinuance of rail service imposes costs on state and local governments, and have adverse economic consequences for shippers and the communities served by the railroads. The Board should not adopt exemptions that favor railroads to the detriment of communities and shippers, but should make sure that public convenience and necessity is the guiding principle behind its decisions.

**II. THE PROPOSED CLASS EXEMPTION CONFLICTS WITH THE
BALANCING OF THE PUBLIC INTEREST REQUIRED BY THE
ICCTA**

As the Board rightly noted in its Advance Notice, 49 U.C.C. §10903 requires the Board to balance competing interests when determining whether abandonment is appropriate, and to consider whether the abandonment would have a serious, adverse impact on rural and community development. The Petitioners seek to have the Board determine that as a class no such balancing is necessary if the petition is filed by a regional (Class II) or short-line (Class III) carrier. The Petitioners claim that this will provide carriers and shippers earlier notice that railroads are in financial danger and provide the parties more “certainty” in the outcome of the proceeding. However, the certainty sought by the proposed rule is not something that can be provided carriers under the statutory scheme adopted by Congress in the Interstate Commerce Commission Termination Act (ICCTA). Under the statutory scheme, abandonment must be weighed against the adverse impact on shippers, communities and public policy.

The standards governing an application for abandonment or discontinuance were recently summarized by the Board:

Under 49 U.S.C. 10903(d), the standard governing any application to abandon or discontinue service over a line of railroad, including an adverse abandonment or discontinuance, is whether the present or future PC&N require or permit the proposed abandonment or discontinuance. In implementing this standard, we must balance the competing benefits and burdens of abandonment or discontinuance on all interested parties, including the railroad, the shippers on the line, the communities involved, and interstate commerce generally. See New York Cross Harbor R.R. v. STB, 374 F.3d 1177, 1180 (2004) (Cross Harbor); City of Cherokee v. ICC, 727 F.2d 748, 751 (8th Cir. 1984). In making our determination of what is in the public interest, "the Board shall [also] consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development." 49 U.S.C. 10903(d). And we must take the goals of the Rail Transportation Policy (RTP) into consideration in making our public interest determinations. 49 U.S.C. 10101.

Yakima Interurban Lines Association – Adverse Abandonment – In Yakima County, WA,

STB Docket No. AB-600 (STB Served: November 19, 2004), at 4-5.

The Board summarizes the issues in an abandonment petition as follows:

As in any abandonment case, whether authority is sought by application or petition, the railroad must demonstrate that the line in question is a burden on interstate commerce. Typically, in an attempt to make that showing, the carrier submits evidence to demonstrate that the costs it incurs exceed the revenues attributable to the line. While abandonment decisions are not based solely on mathematical computations and considerations, the petitioner bears the burden of showing that keeping the line in service (or, as here, available for service) would impose a burden on it that outweighs the harm that would befall the shipping public, and the adverse impacts on rural and community development, if the rail line were abandoned. See Gauley River Railroad, LLC -- Abandonment and Discontinuance of Service--In Webster and Nicholas Counties, WV, STB Docket No. AB-559 (Sub-No. 1X) et al., slip op. at 7 (STB served June 16, 1999).

Wyoming and Colorado Railroad Company, Inc. – Abandonment Exemption – In Carbon

County, WY, STB Docket No. AB-307(Sub-No. 5X) (STB Service: November 10, 2004), at 4.

The Board is required to determine the extent to which avoidable costs of providing rail service plus a reasonable return on the value of the line exceed the revenues attributable to the line. 49 C.F.R. §1152.30(a). The term “avoidable costs” means all expenses that would be incurred by a rail carrier that would not be incurred if the railroad line were abandoned, including cash inflows forgone and cash outflows incurred as a result of the abandonment.⁴ 49 U.S.C. §10904(a)(1). A “reasonable return” means the “cost of capital” to railroad, as determined by the Board.⁵ 49 U.S.C. §10904(a)(2).

These standards already set a high hurdle for any party seeking to challenge abandonment. A challenging party must show not only that a rail line will generate positive revenue, but that the carrier will not make more money elsewhere. To be successful in challenging abandonment, the Board advises that persons protesting abandonment should not only present the harm that they will suffer from abandonment, but should also attempt to discredit the railroad’s evidence of losses or burden from operating the line.⁶ Statements must provide specific and relevant information about the current or future demands for rail service.⁷ Protesters must describe their interests in the

⁴ The avoidable costs of providing freight service on a branch include actual cost attributable to the branch operations and common expenses apportioned according to STB rules. 49 C.F.R. §1152.32.

⁵ This cost of capital is the “opportunity cost” of owning and operating the line -- the cost of tying up railroad assets in track, land and materials rather than putting them to other, more profitable uses. Return on investment is calculated by multiplying the net liquidation value of the track and land by an appropriate rate of return determined annually. 49 C.F.R. §1152.34. Most recently the STB has determined the 2004 railroad cost-of-capital was 10.1%. Railroad Cost-of-Capital – 2004, STB Ex Parte No. 558 (Sub-No. 8) (STB Service: June 30, 2005, as amended (STB Service: July 6, 2005).

⁶ Office of Public Services, Surface Transportation Board, Overview: Abandonments & Alternatives to Abandonments (April, 1997), at 11. This publication gives practical advice on the issues in an abandonment proceeding and the kinds of evidence necessary.

⁷ See Lamoille Valley Railroad Company – Abandonment and Discontinuance of Trackage rights Exemption – In Caledonia, Washington, Orleans, Lamoille, and Franklin Counties, VT, STB Docket no. AB-444 (Sub-No. IX) (STB Served: January 24, 2005) (Protesters failed to establish alleged future interest in rail service where assertions based on estimates and letters submitted were by entities that had never

proceeding in as much detail as possible.⁸ Where parties seek to revoke an exemption that has become effective, the standard is even higher. The party seeking revocation has the burden of proving that regulation of the transaction by the Board is necessary. Petitions to revoke must be based upon reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted.⁹

The Petitioners are asking that they be allowed to abandon a railroad by notice, even when they cannot present data showing that it is justified by public convenience and necessity.¹⁰ The Petitioners' proposal is intended to stifle the ability of shippers and communities to challenge abandonments, even when by definition the line is at least marginally viable. As noted by the Board in its Advance Notice, this is an approach rejected by Congress.

A. The proposal is not consistent with federal rail transportation policy.

The proposed rule will impair the ability of the Board to implement the federal rail transportation policy. It will not foster sound economic conditions in transportation and ensure effective competition and coordination between rail carriers and other modes. Instead it will create uncertainty for shippers, communities and other transportation providers. Further, the proposed exemption will encourage railroads to seek abandonment at the first sign of trouble rather than work with the shippers and communities to develop a strong market for their services. It will encourage shippers and communities to avoid long-term commitments or investments geared towards rail service,

used rail service, do not constitute requests for rail service, are not commitments to use and pay for rail service, and fail to show estimated traffic levels, if realized, would be sufficient to deny abandonment.)

⁸ Overview: Abandonments, at 7.

⁹ Owensville Terminal Company, Inc. – Abandonment Exemption – In Edwards and White Counties, IL, and Gibson and Posey Counties, IN, STB Docket No. AB-477 (Sub-No.3x) (STB Served: December 2, 1998)

¹⁰ “Under the Proposed Exemption, a Small Carrier is encouraged to file as soon as it decides a line is no longer viable; *it need not prove the line lacks viability.*” (Emphasis added) Petition, at 15.

in so far as they will not have the current assurance from the Board that public convenience and necessity will prevail in decisions and that they will have to deal with abandonment only when it is truly unavoidable.

B. The proposed rule is a transaction of significant scope.

A wholesale exemption of a large segment of the rail system from the current rules is a transaction of significant scope. Exempting two classes of railroads from the current abandonment and discontinuance requirements will impact rural communities, the agriculture industry, resource extraction industries, hydro-electric systems and other energy providers. The State of Washington is particularly concerned that when a railroad is abandoned or service is discontinued, the state and local road agencies will have to invest heavily in preservation and maintenance of the highways and roads to serve the unanticipated higher volume of truck traffic.

Further, if the proposed method of reaching abandonment or discontinuance of service is useful to the regional and short-line railroads, it may become the method of choice and remove many petitions from the more rigorous requirements. The Board should require that each abandonment or discontinuance petition be carefully reviewed for public convenience and necessity.

III. THE PROPOSED CLASS EXEMPTION IS BASED UPON A NUMBER OF UNSUPPORTED ASSUMPTIONS

The Petitioners justify their proposed rule request with a series of false assumptions. Implicit in the Petitioners' proposal is the assumption that short-lines and regional carriers are "small" businesses for which the current regulations are

unreasonably burdensome. First, the Petitioners suggest that their proposed class exemption is appropriate because the small size of the carriers involved ensures that any abandonment proceedings will be limited in scope. In support of this claim, they note the “average small carrier operates 91 miles of line” (average 55 miles for Class III carriers).

¹¹ Second, they claim that existing procedures are so burdensome that a “prudent small carrier”, once they determine (whether “right or wrong”) that a line is uneconomic, will raise tariffs, discourage business and defer maintenance in order to assure a case for the two-year out-of-service class exemption. ¹² Finally, the Petitioners assert that the traditional scrutiny given abandonments by the Board under existing rules is unnecessary because market forces assure that “small carriers,” as opposed to Class I carriers, will exhaust all alternatives before seeking an abandonment. All of these assumptions are, at best, unproven. In many cases, these assumptions are simply wrong.

A. Not all “Small Carriers” are small.

The assumption that short line and regional carriers are “small” can be deceiving. In Washington State for example, Watco Companies, Inc. (a non-carrier) owns two “small carriers,” the Palouse River and Coulee City Railroad (PCC) and Great Northwest Railroad (GRNW).¹³ The PCC alone owns Washington’s second longest rail system (330 miles), operating through ownership and trackage rights 410 track miles (370 in Washington and 40 miles in Oregon and Idaho).¹⁴ A recent state study found the PCC to be an important commercial corridor in eastern Washington, transporting agricultural

¹¹ Petition For Rulemaking – Class Exemption for Expedited Abandonment Procedure for Class II and Class III Railroads, STB Ex Parte No. 647, filed May 15, 2003 (hereafter, “Petition”), at 6.

¹² Petition, at 6.

¹³ Both are listed a petitioners in this rule-making proceeding.

¹⁴ By way of comparison, the Union Pacific (UP), a Class I carrier, owns only 290 track miles in Washington. UP operates on 560 Washington track miles through a combination of ownership and trackage rights.

products from Washington's interior to market. Watco, based in Pittsburg, Kansas, is a transportation company involved in multiple transportation businesses and claims ownership of sixteen railroads operating in fifteen states.¹⁵ Two other important short lines, the Cascade & Columbia River and the Puget Sound and Pacific Railroad, are owned by RailAmerica, Inc., another non-carrier holding company that describes itself as "a leading short-line and regional rail service provider with 43 short line and regional railroads, operating approximately 8000 miles in the United States and Canada."¹⁶ RailAmerica railroads operate in 26 states and four Canadian provinces. This consolidation of small carriers under a larger holding company is typical of trends in the industry. Of the 65 petitioning "small carriers" identified by the Board as initiating this rulemaking request, at least two-thirds (43) are owned or affiliated with non-carrier rail holding companies: Genesee & Wyoming, Inc.¹⁷ (32 petitioners); Watco Companies, Inc. (seven petitioners); Anacostia & Pacific, Inc.¹⁸ (four petitioners).

¹⁵ Information from the company website at www.watcocompanies.com/railroads.htm

¹⁶ Information from the company website at www.railamerica.com

¹⁷ This company describes itself on its website at www.gwrr.com:

"Genesee & Wyoming Inc. (GWI) is a world-class provider of rail-freight transportation and its supporting services. GWI functions as a holding company with subsidiaries that own and operate regional freight railroads. We own or have interests in 49 railroads in five countries (United States, Canada, Mexico, Bolivia and Australia), and operate over 9,300 miles of owned and leased track and more than 3,000 additional miles under track-access arrangements."

¹⁸ This company describes itself on its website at www.anacostia.com:

"Anacostia & Pacific is a transportation development and consulting firm. It has developed eight new U. S. railroads since it was founded in 1985. In each case, Anacostia & Pacific negotiated the terms of acquisition, developed the business plan and recruited senior management. These companies have provided excellent financial returns to their investors and have established strong business relationships with their customers, employees, and communities."

B. Not all abandonments proposed by Class II and III railroads involve small segments of track.

Washington's experience shows how misleading the Petitioners' "averages" purporting to show the limited scope of regional and short-line railroads can be. In March 2004, Watco submitted a letter to the Governor of Washington State stating its intention to begin operational embargoes and the filing of a formal abandonment plan for some PCC segments, effective June 1, 2004, unless agreement was reached with WSDOT to proceed with acquisition and rehabilitation. Watco proposed to abandon key portions of the rail line under its ownership. This action prompted the State of Washington to take action to acquire right of way from Watco and commit substantial public funds for track rehabilitation.¹⁹ Assuming all of the proposed abandonments were granted, the PCC system would be halved, shrinking from 410 miles to about 200 miles, with an estimated 45 percent reduction in loads carried.²⁰

Watco's proposed action illustrates that short line abandonments can have a very large financial impact. Grain cooperatives would have had to expend significant funds to reconfigure grain elevators for loading trucks. Shippers claimed that shipping costs would increase over time, and studies are under way to verify that impact. A recent review of road impacts indicated that if the portion of the PCC between Cheney and

¹⁹ In 2004 Watco sold the State of Washington the underlying right of way for the P&L and PV-Hooper branches for \$6,486,000, but retained an "exclusive freight rail easement" giving the Watco or its successors "the exclusive right to conduct freight railroad operations on the rights-of-way." In a concurrent lease-back agreement, Watco leased the right of way back from the State and agreed to provide annual and periodic business plans, commit substantial resources to track maintenance and not seek to abandon the rail lines without written State approval. See State of Washington, Department of Transportation – Acquisition Exemption – Palouse River and Coulee City Railroad, Inc., STB Finance Docket No. 34609 (STB Served: May 3, 2005). The lease also anticipated State expenditures of \$21,089,000 between 2005 and 2013 for track rehabilitation.

²⁰ Watco abruptly broke off negotiations for the purchase of the third branch (CW line) in September 2005 and announced plans to discontinue service on the CW and P&L Branch lines.

Coulee City was abandoned (108 miles of the 330 mile system), at least \$25 million, and possibly up to \$50 million, would have to be spent every 12 to 20 years to upgrade state and county roads to handle the increased heavy truck traffic. The impact is much greater if all of the lines are considered.

Homeland security and regional energy issues were raised by the proposed abandonment. They resurfaced in December 2005 when federal officials learned that Watco was again proposing abandonment of a portion of the PCC lines. Very large replacement transformers are shipped periodically on a branch of the PCC lines to a point where they can be trucked easily to Grand Coulee Dam. It initially appeared that there was no viable transportation alternative. Although alternatives have been identified over a three month time frame, it is still unclear whether the alternatives are viable and whether roads will have to be improved to handle the extremely heavy loads on the alternative routes. This also illustrates that it takes more time than allowed by the rulemaking proposal to study national security and other national policy impacts of abandonment.

C. Current abandonment procedures are not unreasonable or uncertain.

A key argument of the Petitioners is that administrative burdens and the uncertainty of the current abandonment application, and individual exemption process selectively force regional and short-line railroads to run their unwanted rail lines into the ground to take advantage of the 2-year out-of-service exemption. Assuming that the Petitioners are accurately describing their practices when seeking to abandon a rail line, there is little reason to believe that this practice is motivated by the Board's current rules.

The statistics in the Board's most recent activity report do not support the claim that applications or petitions are ultimately less likely to be granted than notices.²¹ A summary of abandonment activity for the three-year period encompassing 2002 – 2004 show remarkably similar results:

	Requested	Granted	Denied/Dismissed	Dismissed OFA
Applications	10	11	3/1	0
Petitions	76	76	2/1	1
Notices	171	170	1/2	8

Note: applications, petitions or notices may not have been acted on in the same year as they were filed.

These figures hardly support the claims that the outcome of exemption petitions is “uncertain.” While there are about twice as many notices for the out-of-service exemption as there are other abandonment filings, it does not appear that uncertainty in the result is the motivating factor.

Neither do these statistics support the anecdotal claims that limiting individual exemptions to cases where there are not genuine disputes of fact places some significant burden upon carriers seeking abandonment or that adopting a small carrier class exemption will reverse any unintended economic consequences of the Board's current rules. The Petitioners fail to explain why, if they believe a line is unprofitable, they do not simply offer the line for sale *before* the line has been vacant for two years, when presumably they may be able to get a better price. Indeed, there does appear to be an

²¹ Surface Transportation Board, FY 2002-2004 Report (December 22, 2005), at 26.

active market to acquire short-lines by regional and short-line carriers.²² Alternatively, discouraging service and deferring maintenance on a viable line would logically result in more feeder line applications to compel the sale of these lines to an interested operator prior to abandonment under 49 U.S.C. §10907.

It is also unclear how the Petitioners' proposal would solve the alleged problems. If generating information sufficient to support an application or individual exemption petition is so burdensome that carriers choose to run the business off the line, it is unclear how generating the information for their proposed small carrier class exemption will ease this burden.

D. Current information requirements are not unreasonably burdensome.

The Petitioners complain about the cost of providing information and of waiting for comments and decisions. However, they do not provide a detailed explanation of what those costs are or compare those costs to the financial capacity of the companies that have to file the petitions. They treat all regional and short-line carriers as equally incapable of providing information or waiting for decisions. The Petitioners do not back up these assertions. The railroads that are owned by large national or regional companies are assumed to be as financially and managerially strapped as the locally owned small railroad company. The Board should ask for more detailed information on the cost to prepare each of the documents required by the Board's current processes and the cost of "delay" from the time a company makes the decision to abandon or discontinue service to the time the Board makes its decision. The Board should also ask the Petitioners to show that the current requirements are unmanageable for all regional and short-line railroads

²² The FY 2002-2004 Report, at 14, states that the Board granted 102 requests by non-carriers to acquire railroads under 49 U.S.C. §10901, and 75 requests by Class II and Class III railroads under 49 U.S.C. §10902.

regardless of the financial capacity of the larger companies of which they are a part. Finally, Petitioners fail to explain why gathering the information required by their proposed rule is significantly less burdensome than that which they are already supplying under a petition for individual exemption. The Petitioners should explain which specific information requirements necessary for an abandonment application they find unmanageable, and explain why the cost of gathering the information they would provide under the proposed rule is any less onerous.

Moreover, where a company demonstrates that gathering this information is unduly burdensome, the current rules provide that the Board can consider requests for waivers on a case-by-case basis. The Petitioners cite Camas Prairie Railnet, Inc. – Abandonment – In Lewis, Nez Perce, and Idaho Counties, ID (between Spalding and Grangeville, ID), STB Docket No. AB 564 (STB Served: March 9, 2000), as an example where waiver was denied unreasonably. However, in that case, the STB Secretary noted that the railroad did not “assert that it is unable to obtain the prescribed information from the former owner, or even if it would be difficult to do so.” This hardly supports a claim that gathering the information was burdensome. The abandonment was granted a few months later.²³

The Board should consider whether to establish more flexible case-by-case standards for when to grant waivers of specific process requirements. That will allow the rule of common sense to prevail without abandoning the Board’s responsibility to exercise judgment.

²³ Camas Prairie Railnet, Inc. – Abandonment – In Lewis, Nez Perce, and Idaho Counties, ID (between Spalding and Grangeville, ID), STB Docket No. AB 564 (STB Served: September 13, 2000).

E. Market forces are not different for “small carriers.”

The Petitioners assert that close scrutiny of abandonments by “small carriers” is unnecessary because market forces cause them to, “if anything, . . . continue attempts to revive unviable lines longer than economically prudent, because abandonment further decreases the carrier’s limited commercial opportunities.”²⁴ However, short-lines are not always stand-alone operations; in Washington State, the PCC is one short-line among many owned by Watco. In some cases, a railroad may be abandoned for reasons unrelated to the line’s local profitability or public convenience and necessity, such as overall debt structure, market changes in other parts of the country, or greater profitability of other lines. While these factors may be appropriate considerations when the Board weighs an abandonment application or petition, they do not support the Petitioners’ assertion that these considerations are categorically different for the so-called small carrier. A rail carrier may seek to discontinue service on an otherwise viable line because it anticipates greater profits through scrapping the rail and piecing the right-of-way out for non-rail purposes.²⁵ It is for this reason that Congress has required the Board to weigh the public convenience and necessity before authorizing discontinuance or abandonment.

The Petitioners argue that the out-of-service exemption is counter-productive and leads to abuse of the process. Yet they do not provide a single example of this. Even if companies deliberately manipulate the rule to their advantage by under-investing in the rail lines, leaving them in such bad condition, or by setting prices so high that there is no

²⁴ Petition, at 6.

²⁵ See, e.g., Railroad Ventures, Inc. v. Surface Transportation Board, 299 F.3d 523 (6th Cir. 2002), where the incumbent owner apparently acquired a viable rail line with the intention of dismembering it and resisted all efforts of the STB to transfer the line intact to a bona fide purchaser making an offer of financial assistance to continue service on the line.

traffic on the line, abuse of one exemption does not justify creating another exemption that may also be subject to abuse and manipulation. If anything, the Board should carefully examine whether the out-of-service exemption as it is purportedly used by the Petitioners is contrary to the public interest.

IV. SPECIFIC CRITICISMS OF THE PROPOSED RULE CHANGES

A. No notice to state or local governments.

Under the proposed rule changes, railroads are required to give advance notice of abandonments to shippers, but not to state or local governments. However, governments frequently either make an offer of financial assistance (OFA) or help communities and shippers form coalitions to make such offers. If the proposal is adopted, states and affected local governments should receive the same notice.

B. Limitations on reasonable discovery.

A key component of the proposed rule appears to limit the information available to participants in the proceeding to that specifically required for the original notice filing. This truncation of the Board's existing discovery rules under 49 C.F.R. §1114 is unwarranted and will unfairly prevent potential challengers or person considering an OFA from gaining information from the source best able to provide it.

Moreover, the proposed rules allowing shippers to elect to withhold information provided to persons considering potential OFA are unnecessary. The Board's rules already provide for protective orders where confidential information is submitted in connection with a proceeding. 49 C.F.R. 1104.14 (Protective Orders to Maintain Confidentiality)

C. No "future year" projections.

The Board should not allow omission of any information on expected future revenue or activity in the immediate future. Such information is highly significant both for a consideration as to whether the line is appropriate for abandonment, and for the preparation of a potential OFA to purchase the line. Carriers should be required to provide this information.

D. Trackage and haulage rights should be determined by the Board.

Under the proposal, the abandoning carrier gets to elect the nature of the connecting rights it will offer to a purchasing operator. However, determination of appropriate through routes, trackage and joint rates is ultimately the responsibility of the Board. 49 U.S.C. §10705; 49 U.S.C. §10907(f). Where there is not agreement, the Board should make the decision.

E. Delay in environmental information hampers OFA and prevents the Board from meeting its environmental and historic preservation responsibilities.

The environmental and historic reports should be available to all interested parties at the beginning of the process. These reports contain information that is important for those jurisdictions or companies that may wish to make an offer of financial assistance. Part of the cost-benefit analysis that a jurisdiction or company will conduct to determine whether to make an offer is understanding the environmental and historic implications of becoming financially involved in a rail line or allowing that rail line to be abandoned. Moving the filing of these reports to the end of the process will create an unreasonable pressure to short-change environmental and historic considerations, because the petitioner

will argue that no offer of financial assistance has been made and that it does not have to meet the public convenience and necessity test.

Consideration of historic preservation impacts is required by Section 106 of the National Historic Preservation Act. 49 C.F.R §1105.8(b) lists several allowances for exemptions, but abandonment is not an exempted action. The process for considering historic preservation during abandonment proceedings cannot be applied arbitrarily to one class of railroad but not to others. Moreover, the only means that the Department of Archeology and Historic Preservation has to determine the extent and nature of these affects is through the historic report as prescribed in 49 C.F.R §1105.7 and 49 C.F.R§1105.8. The proposal will not allow the Board to meet its responsibilities and could lead to direct and indirect adverse affects to cultural resources.

V. THE BOARD SHOULD IMPROVE EXISTING RULES.

A. Enforce the System Diagram Map.

The goal of accelerating the transition of potentially viable railroads to new ownership through sale (either voluntary or under Board supervision through a feeder-line acquisition or OFA) may best be achieved by enforcing the requirement that all carriers maintain updated system diagram maps as required by 49 U.S.C. § 10903 and 49 C.F.R. § 1152.13. Although the board will reject a formal abandonment application for a line not identified for abandonment in the system diagram map at least 60 days before filing, this requirement is circumvented when companies seek exemptions from the formal abandonment rules. Making railroads declare their intention by enforcing the system diagram map requirement in all abandonment proceedings, including individual

exemption petitions and out of service notices, will encourage the sale of viable lines to new operators. This requirement would be further enhanced if the railroads were required to file their system diagram maps annually with the state transportation agencies and other interested parties in the states in which they operate.

B. Adopt more specific rules on information to be filed in support of individual exemptions.

While the State of Washington objects to limiting the information available in an exemption proceeding to that proposed by petitioners for their "small carrier" proposal, it recognizes the potential confusion by an unsophisticated carrier as to what information should be filed to support an individual exemption. This might be reduced if the Board adopted clearer guidelines about what information or kinds of information must be filed to support an individual exemption petition.

C. Allow replies by railroads in petitions for individual exemption.

One of the concerns expressed by the Petitioners is that they have no right under the current process to respond to protests or comments, even if the protests or comments contain inaccurate information. There should be an opportunity for rebuttal of information provided by parties opposing abandonment.

VI. THE BOARD SHOULD NOT SHORTEN THE TIME FOR OUT-OF-SERVICE CLASS EXEMPTIONS.

While the proposed one-year standard might lessen the damage to the facilities and equipment of the railroad caused by the neglect of the company while it seeks to abandon the line, it will not solve the underlying problem: that according to the

Petitioners, the out-of-service exemption encourages companies to under-invest in their lines in order to facilitate later abandonment.

An alternative to repealing the out-of-service exemption or adopting a new exemption is to make it easier for shippers and communities to file complaints to alert the Board that the out-of-service exemption is being abused by a specific railroad. Shippers should be allowed to file complaints without a filing fee. If the complainant prevails in the case, the Board should grant the complainant reimbursement from the railroad for reasonable expenses in preparing the complaint. The Board could also establish benchmarks for maintenance and preservation investment on rail lines, and have the railroads report each year on its investments in each line segment so that the Board and communities know whether the company is deliberately under-investing.

VII. CONCLUSION

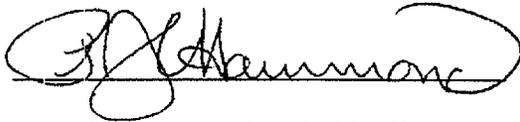
Any process for considering proposals to abandon railroad infrastructure must give the states, local jurisdictions, and shippers a reasonable opportunity to consider options, and develop a serious response. That response might be to protest the application for abandonment or discontinuance, or it may be to make an offer of financial assistance. The system diagram map provides some notice of a railroad's intent and the burden of proof encourages a railroad to work with the state and community. In the out-of-service exemption process, the state and local community at least are able to monitor the service on the line to determine the company's intentions. The proposed class exemption would remove all signals to the state and community, and leave states with less than two months to respond to an application.

In Washington State, the response to a recent threat of abandonment was to purchase the property and contract with the company involved to operate the facilities. It takes many months to develop an offer to subsidize or purchase a rail line. It takes time for the states and communities to undertake a thorough analysis of the potential consequences of a railroad abandonment. For example, before making an offer of financial assistance, a state or local jurisdiction would want to do a traffic analysis to judge the increase in truck traffic and an engineering analysis to determine the cost of reconstruction or preservation of the highway or road. Only then can the jurisdiction determine whether it would be less expensive to provide an offer of financial assistance.

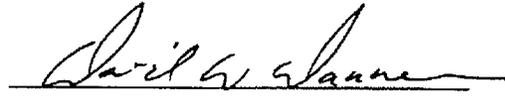
Any procedure the Board approves should meet the following criteria:

- The railroad should give fair warning of its intentions through a regular updating of its system diagram map and designating those lines that may be considered for abandonment during the next few years. The state and local transportation agencies should be provided those system diagram maps.
- The railroads should comply with basic management information and accounting practices at all times so that information is available to the Board and all affected interests when the information is needed for a proceeding.
- As provided in the current rules, state and local jurisdictions should be kept informed by the railroads and not surprised by moment's-notice filings. It takes time for state agencies and local jurisdictions to do the studies they need to undertake to respond to petitions and to assess transportation alternatives in those cases where the railroad line is eventually abandoned.

Again, the State of Washington appreciates the opportunity to comment on the proposed rules and intends to participate in any further proceedings on this petition.

A handwritten signature in black ink, appearing to read "Paula Hammond", written over a horizontal line.

Paula Hammond, Chief of Staff
Department of Transportation

A handwritten signature in black ink, appearing to read "David Danner", written over a horizontal line.

David Danner, Executive Director
Utilities and Transportation Commission

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 647

CLASS EXEMPTION FOR EXPEDITED ABANDONMENT PROCEDURE FOR
CLASS II AND CLASS III RAILROADS

STATE OF WASHINGTON, WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION AND WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

DECLARATION OF MAILING

MARCH 6, 2006

I declare that I mailed a copy of the Comments of the State of Washington, Washington State Department of Transportation and Washington Utilities and Transportation Commission via US Mail Postage Prepaid via Consolidated Mail Service on March 6, 2006 to all parties as follows:

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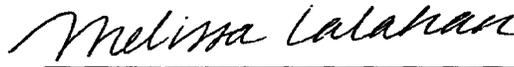
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I declare under penalty of perjury under the laws of the state of Washington that
the foregoing is true and correct.

DATED this 6 day of March, 2006, at Olympia, Washington.



MELISSA CALAHAN