



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

Transportation & Public Construction Division
PO Box 40113 • Olympia WA 98504-0113 • (360) 753-6126

April 4, 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

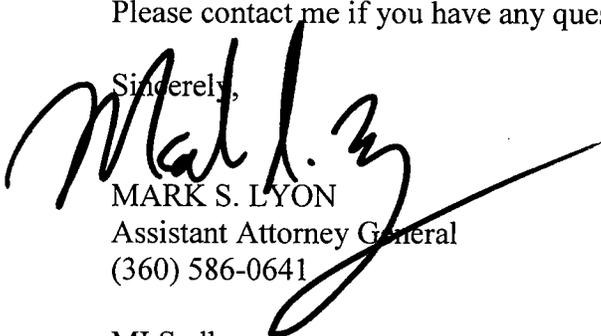
Dear Secretary Williams:

Attached for filing please find the Response to Interested Parties' Comments by the State of Washington in the above referenced rulemaking proceeding. This Response is filed jointly by 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) represents the position of the State of Washington.

We are filing electronic versions of this Response 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

MLS:alh

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

RESPONSE TO INTERESTED PARTIES' COMMENTS
BY THE STATE OF WASHINGTON, WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION AND WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

APRIL 4, 2006

The State of Washington, by the Washington State Department of Transportation and the Washington Utilities and Transportation Commission, submits these reply comments in response to those by interested parties regarding the proposal by 65 Class II and Class III railroads ("Petitioners") to exempt Class II and Class III railroads from the current abandonment procedures. After reviewing the comments submitted in this proceeding, the State of Washington reaffirms its opposition to the Petitioners' proposal. It submits these reply comments to address specific matters of particular concern to the State of Washington.

While we agree the Board should consider changes in specific information or process requirements that are unreasonably burdensome, we stress that any revisions should not jeopardize the Board's ability to make the right judgment regarding public convenience and necessity or the public's opportunity to participate in the decision.

Financial Responsibility of Offerors

Comments submitted by RailAmerica and Delta Southern Railroad Inc. et.al. suggested that not all offers of financial assistance are made by parties able to follow through and that standards should be established to prevent offers that are made simply to delay the process. We agree that the Board should have reasonable standards and procedures to make sure that offers of financial assistance are made by financially responsible parties. Under such standards, however, state and local governments should be presumed to be financially responsible because they enjoy a broad tax base and are accountable to their citizens for any offers they make. The Board currently reviews offers to determine whether the offeror is financially responsible and whether the offer itself is reasonable, and accepts state and local governments as financially responsible. Petitioners offered no specific suggestions for changes to the standard or review procedures. If the Board seeks to propose changes on its own motion, we would request an opportunity for all parties in this rulemaking to consider them.

Environmental and Historic Reports

RailAmerica and the Association of American Railroads suggested that the process for commenting on environmental and historic reports can be lengthy and that a deadline should be set for receiving comments. We agree that the Board should consider, in consultation with the environmental and historic preservation communities, a reasonable deadline for comments to environmental and historic reports. The deadlines should apply to governmental agencies as well as other parties.

Notice Requirements

In our comments, we pointed out the need for more advance and comprehensive notice of a railroad's intention to abandon a line or discontinue service. Petitioners suggested an amendment to their original proposal, offering a provision for greater advance notice. While we do not support trading improved notice in exchange for a class exemption, we believe the Board should consider seriously having railroads that intend to file applications (under any scenario) provide notice to interested parties at least 60 days in advance of filing an application for abandonment or discontinued service, including at least 40 days further advance notice to shippers.

Unopposed Applications

Petitioners and several other parties suggested that the Board grant applications if no protests are received within 30 days. We strongly oppose this suggestion. First, 30 days is not enough time for a state or community to do the analysis necessary to make the judgment whether to file a protest. The states and communities require time to assess the impact of a proposed abandonment and to consult with one another before making a decision regarding filing an objection. Second, the Board is required to make decisions based on a finding of public necessity and convenience. The failure of an application to attract a protest is not and should not be deemed tantamount to such a finding.

Other Exemption Issues

The Association of American Railroads (AAR) suggested incorporating Class I railroads into parts of the proposed class exemption. We oppose any expansion of the

discussion to include Class I railroads. While we do not support the proposal for a exemption for Class II and Class III railroads, we note that many of the arguments proposed in support of such an exemption are based on assertions that Class II and Class III railroads are substantially different from Class I railroads and should not have to meet the same standards. The AAR proposal flies in the face of that assertion.

Further clarity by the Board as to what should be supplied by a railroad in support of an individual exemption petition may address some of the concerns identified by the petitioners and avoid the need for a new exemption. For example, where a railroad can demonstrate that it has provided advance notice to the major shippers affected and they do not object to abandonment, the railroad should have little concern that the Board will hold up its abandonment.

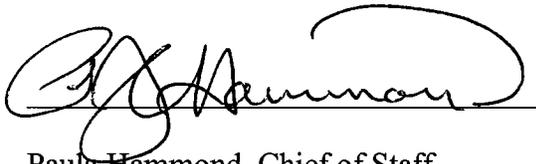
Finally, we note with particular interest the comment by RailAmerica, owner of 43 subsidiary shortline railroads, indicating that even if Petitioners' proposed rule were adopted that it would rarely, if ever, follow the outlined process. Even though RailAmerica is not opposed to the other Class III railroads taking advantage of the proposed process, the assertion that RailAmerica would rarely, if ever, follow the process should not be considered a basis for granting a broad exemption, but should rather call into question the need for it.

Conclusion

The State of Washington continues to oppose the Petitioners' proposal to exempt Class II and Class III railroads from the current abandonment procedures. While some changes in requirements may be warranted, we urge the Board to reject the Petitioners'

proposal, and to continue to ensure processes that allow the Board to make informed decisions about how proposed abandonments would affect the public convenience and necessity.

Respectfully submitted,

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