

STEPTOE & JOHNSON ^{LLP}

ATTORNEYS AT LAW

218846

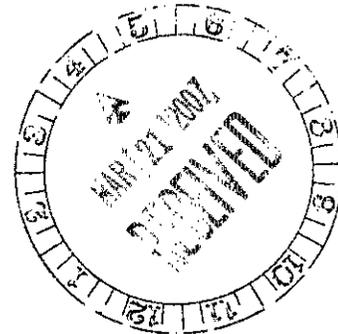
David H. Coburn
202.429.8063
dcoburn@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

March 21, 2007

Via HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001



FILED

MAR 21 2007

SURFACE
TRANSPORTATION BOARD

**Re: Docket No. AB-999X, Caldwell County Railroad Company –
Discontinuance of Service Exemption – In Caldwell County, NC**

Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original plus ten copies of Caldwell County Railroad Company's Petition for Exemption and a check for the filing fee in the amount of \$5,300. I am also enclosing on a compact disc: (1) a copy of this filing in PDF format and (2) a copy of the draft Federal Register notice in Microsoft Word.

I would appreciate it if you would date-stamp the additional copy of the filing provided and return it to the messenger for our files. I appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'David H. Coburn'.

David H. Coburn
Attorney for Caldwell County
Railroad Company

Enclosures

0001

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

218866

Docket No. AB-999X

**CALDWELL COUNTY RAILROAD COMPANY --
DISCONTINUANCE OF SERVICE EXEMPTION --
IN CALDWELL COUNTY, NC**

PETITION FOR EXEMPTION

ENTERED
Office of Proceedings

MAR 22 2007

Part of
Public Record

FEE RECEIVED

MAR 21 2007

**SURFACE
TRANSPORTATION BOARD**

FILED

MAR 21 2007

**SURFACE
TRANSPORTATION BOARD**

Betty Jo Christian
David H. Coburn
Scott M. Mirelson
STEPTOE & JOHNSON LLP
1330 Connecticut Ave., NW
Washington, D.C. 20036
(202) 429-8113

Attorneys for Caldwell County Railroad
Company

March 21, 2007

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-999X

**CALDWELL COUNTY RAILROAD COMPANY --
DISCONTINUANCE OF SERVICE EXEMPTION --
IN CALDWELL COUNTY, NC**

**VERIFIED PETITION OF
CALDWELL COUNTY RAILROAD COMPANY
FOR EXEMPTION**

INTRODUCTION

Caldwell County Railroad Company (CCRC) seeks an exemption from the Surface Transportation Board (Board or STB) pursuant to 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 in order to discontinue service over approximately five miles of a rail line in Caldwell County, North Carolina.

I. BACKGROUND FACTS¹

In 1994, CCRC, a Class III shortline carrier, leased an approximately 22 mile line of railroad (the "HG Line") from the Norfolk Southern Railway Company (NS). The line extended

¹ This Petition has been verified by Donald J. McGrady, President of the Caldwell County Railroad Company.

from milepost HG-90.6 at Hickory, NC to milepost HG-112.7 at Valmead, NC. *See Caldwell County R.R. Co. -- Lease, Operation, and Acquisition Exemption -- Norfolk Southern Ry. Co.*, Finance Docket No. 32584 (ICC served Oct. 19, 1994).² In January 1995, the Caldwell County Economic Development Commission (CCEDC) acquired the HG Line from NS. *See Caldwell County Econ. Dev. Comm'n--Acquisition Exemption--Norfolk Southern Ry. Co.*, Finance Docket No. 32658 (ICC served Feb. 14, 1995)(“*CCEDC Acquisition*”).³ “CCEDC was established for the purpose of preserving local rail service which Class I rail carriers had abandoned or planned to abandon in the future.” *Caldwell County Econ. Dev. Comm'n--Exemption From 49 U.S.C. Subtitle IV*, Finance Docket No. 32659, slip op. at 1 (ICC served Aug. 3, 1995). CCEDC subsequently leased the track that constitutes the HG Line to CCRC, which has operated over the line since 1994. CCEDC also petitioned the Board’s predecessor, the Interstate Commerce Commission (ICC), to exempt it from all obligations under 49 U.S.C. Subtitle IV in connection with its acquisition of the HG Line. *See id.* The ICC granted CCEDC’s Petition subject to the condition that it “(1) notify the Commission in advance of any proposed abandonment or discontinuance of service on the line; (2) submit any environmental or historic data that may be required to permit the Commission to conduct an environmental review of the abandonment or

² Concurrent with the filing of CCRC’s Notice of Exemption, Donald J. and Carol N. McGrady filed a Continuance in Control Exemption in order to Continue in Control of CCRC upon its becoming a Class III rail carrier. *See Donald J. and Carol N. McGrady--Continuance in Control Exemption--Caldwell County R.R. Co.*, Finance Docket No. 32585 (ICC served Oct. 19, 1994). The Commission’s Notice in Finance Docket 32584 listed the milepost at Hickory, NC as 90.0. By letter dated January 19, 1995, CCRC informed the ICC that the milepost marker was actually 90.6 and requested that the Notice be corrected.

³ CCEDC had originally noted the milepost at Hickory, NC as 90.0. It later corrected that milepost marker to 90.6. *See CCEDC Acquisition*, Finance Docket No. 32658, slip op. at 1 n.2 (ICC served Feb. 14, 1995).

discontinuance; and (3) comply with any conditions that might be found to be required prior to consummation of the abandonment or discontinuance.” *Id.* at 3.⁴

CCRC now proposes to discontinue service over the westernmost five miles of the “HG Line” running from milepost 107.5 to the end of the line at Milepost 112.7, where Sealed Air Corporation’s (“Sealed Air”) Valmead Plant, which manufactures protective packaging, is located. Service will continue on the remainder of the HG line. A map of the portion of the line being proposed for discontinuance is attached to this Petition as Exhibit A.

Sealed Air is currently the only shipper over the segment of the HG Line proposed for discontinuance. It receives just 2-3 railcars per week. Volumes transported have been low with just 132 rail cars in 2004, 140 rail cars in 2005 and 125 rail cars in 2006. There is no overhead traffic on this line segment.

The track on the line on which service is sought to be discontinued is considered “excepted” for Federal Railroad Administration purposes. Keeping the line segment in service will be very costly. According to a track inspection and evaluation report performed by Main Line Rail Management, Inc. dated December 30, 2005, several hundred thousand dollars of repairs need to be performed now on the line segment proposed for discontinuance of service. Some bridges in the discontinuance area will need repairs. Further, the line at issue is subject to occasional flooding which adds to maintenance costs. On the other hand, CCRC can retain most of the revenues earned from the traffic on the line through the transloading of the freight as described in this Petition, while saving the repair and maintenance costs associated with the line segment at issue.

⁴ CCEDC will address the requirements of the August 1995 order in Section III of this Petition.

In September 2006, a new industrial site was established proximate to milepost 108 of the HG line. The site is in excess of 200 acres and would be one of the largest industry investments ever in North Carolina. The new development will significantly benefit Caldwell County, which has been beset by high unemployment due to job losses in the furniture industry. As relevant to this Petition, the industry locating at the site does not require rail transportation and has requested that rail service through its campus be discontinued due to security and vibration issues.

To protect the interests of Sealed Air (the only shipper receiving rail service on the line segment at issue), Caldwell County and the City of Lenoir, NC reached an agreement with that entity which protects Sealed Air's transportation interests following a discontinuance of rail service by CCRC. Sealed Air will receive assistance with plant modifications so it can receive deliveries by truck from a new rail offload facility being built at milepost 105 by CCEDC. The new offload facility, which is planned to be in place and functioning no later than the date for the discontinuance of rail service, has access to U.S. Route 321A and North Carolina Route 18. At least two other area businesses which currently have no rail service have indicated that they too will take advantage of the offload facility, transferring their freight from longer highway routings to a combination of rail and shorter-route truck service.

CCEDC fully supports CCRC's discontinuance of service. The Verified Statement of William S. Stone, Vice Chairman of CCEDC, describing such support, is attached to this Petition as Exhibit B. Moreover, Sealed Air supports the discontinuance request subject to the offload facility being in place and operational prior to the discontinuance. The Verified Statement of Kevin J. Holian of Sealed Air is attached to this Petition as Exhibit C.

CCEDC has no current plans to abandon the line segment proposed for discontinuance. Rather, CCEDC plans to maintain the line so rail service might resume over the discontinued portion of the HG line if future developments in the area so dictate.

II. ARGUMENT

A. The Board Should Exempt this Transaction from the Prior Approval Requirements of 49 U.S.C. 10903

In order to discontinue operations, a rail carrier must obtain prior approval from the Board under 49 U.S.C. § 10903. 49 U.S.C. § 10903 (a)(1)(B). “Under 49 U.S.C. 10502, however, [the Board] *must* exempt a transaction or service from regulation when [it] find[s] 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.” *Norfolk Southern Ry. Co.--Discontinuance of Service Exemption--In Norfolk, VA*, STB Docket No. AB-290 (Sub-No. 269X), slip op. at 2 (served July 7, 2006)(emphasis added); *see also Simmons v. ICC*, 760 F.2d 126, 132 (7th Cir. 1985)(Posner, J.) (“*Simmons*”) (“Congress wanted the exemption power to be wielded boldly”). While CCRC’s proposed discontinuance would otherwise be subject to Section 10903, the Board should exempt the discontinuance from Section 10903 as shown below.

1. Regulation of CCRC’s Discontinuance of Service is Not Necessary to Carry out the Rail Transportation Policy at 49 U.S.C. 10101

The Board does not need to apply Section 10903 to this discontinuance of service in order to carry out the federal rail transportation policy (RTP) of Section 10101. In fact, exempting this transaction from regulation will further the goals of federal rail transportation policy as it will “promote a safe and efficient rail transportation system” by allowing CCRC “to

earn adequate revenues”, “foster sound economic conditions in transportation”, “reduce regulatory barriers to . . . exit from the industry” and “encourage honest and efficient management of railroads” 49 U.S.C. §§ 10101(3),(5),(7) and (9). The Board has found that exempting a discontinuance with similar facts to CCRC’s proposal did not require detailed scrutiny in order to carry out federal rail transportation policy. *Longhorn Ry. Co.--Discontinuance Exemption--In Burnet, TX*, STB Docket No. AB-501 (Sub-No. 1X), slip op. at 2 (served Sept. 2, 1997) (“*Longhorn*”) (detailed scrutiny of discontinuance not required to implement RTP where line had single shipper and service would continue at new rail connection). Moreover, the discontinuance sought here will enable a significant economic development project to proceed, with no loss of transportation service to the one shipper on the line.

2. Regulation of CCRC’s Discontinuance of Service under Section 10903 is Not necessary as the service is of Limited Scope

Regulation under Section 10903 is unnecessary as the proposed discontinuance of service is limited in scope. The portion of the HG Line that CCRC is proposing to discontinue service on is about five miles long in a single state and is the functional equivalent of “a tiny stretch of line . . . used by a tiny railroad for light traffic in a rural area. . . .” *Simmons*, 760 F.2d at 132 (finding that “limited scope” aptly described such a line). It is well-established precedent that discontinuances of service on track of even greater length than CCRC’s proposed discontinuance are considered to be limited in scope. See *Texas R.R. Switching, Inc.--Discontinuance of Service Exemption--In LaSalle, Zavala and Dimmit Counties, TX*, Docket No. AB-428X, slip op. at 3 (ICC served June 9, 1995) (51.55 miles of rail line in a single state); *Lakeside Transp. L.L.C., d/b/a Lakeside Transp. Co.--Discontinuance of Service Exemption--Rail Line Between Moberly*

and *Excello, MO*, Docket No. AB-429X, slip op. at 2 (ICC served Mar. 24, 1995) (proposed discontinuance involves 15.3 miles of line in a single state).

3. Regulation of CCRC's Discontinuance of Service under Section 10903 is Not Necessary to Protect Shippers from an Abuse of Market Power

Moreover, even if the Board were to find that the proposal was not limited in scope, the transaction should still be exempted as regulation is not necessary to protect shippers from an abuse of market power. First, as in the instant case, where the affected shipper(s) does not object to the discontinuance there is no abuse of market power. *See Kansas & Oklahoma R.R., Inc.--Discontinuance Exemption--In Lane, Ness and Rush Counties, KS*, STB Docket No. AB-853 (Sub-No. 2X), slip op. at 2 (served Oct. 15, 2004) (“K&O”) (regulation not needed to protect shippers from abuse of market power where no current shippers objected to discontinuance); *Soo Line R.R. Co.--Discontinuance Exemption--In Rockford, IL*, Docket No. AB-57 (Sub-No. 30X), 1990 WL 287258, at *3 (ICC decided Feb. 2, 1990) (since the sole shipper “fully supports the relief, regulation is not necessary to protect shippers from an abuse of market power.”). Second, there is no abuse of market power as Sealed Air will have other transportation options available to it by virtue of the construction by CCEDC of a modern offload facility at another point on the HG line and the availability of truck service. The Board has consistently held that where a shipper has alternative transportation options available to it in the case of a discontinuance of service, regulation is not necessary to protect the shipper from abuse of market power. *See K&O*, Docket No. AB-853 (Sub-No. 2X), slip op. at 2-3 (STB served Oct. 15, 2004) (regulation not necessary to protect shippers from abuse of market power where shippers had alternative motor and rail carrier service available); *California Northern R.R. Co.-Discontinuance Exemption-In Merced County, CA*, STB Docket No. AB-458X, slip op. at 2 (served Sept. 7, 2001), *clarified, California Northern R.R. Co.-Discontinuance Exemption-In Merced County*,

CA, STB Docket No. AB-458X (served Nov. 21, 2001) (“Because the line’s only shipper will continue to have access to rail service at a new loading facility, we find that regulation is not necessary to protect shippers from an abuse of market power.”); *Longhorn*, STB Docket No. AB-501 (Sub-No. 1X), slip op. at 2 (served Sept. 2, 1997) (“Because the line’s only shipper will continue to receive rail service at a new rail connection, we find that regulation is not necessary to protect shippers from an abuse of market power.”).

III. THERE ARE NO ENVIRONMENTAL ISSUES RAISED BY THE PROPOSED DISCONTINUANCE

The proposed discontinuance of service on a segment of the HG line will not result in the diversion to trucks of more than the threshold for motor carrier diversions set forth in the Board’s environmental rules, namely an increase in 10 percent or more of the average daily traffic count or 50 trucks/day on any road segment. See 49 C.F.R. § 1105.7(e)(5)(C). Given the relatively low volumes of freight moving to/from the Sealed Air facility by rail, the number of trucks needed to service that facility will not exceed 10-15 trucks/week.

Nor will there be any other adverse environmental impacts or impacts to historic resources as a result of the planned discontinuance. The only operational change will be that CCRC trains will cease to operate over the line segment at issue. The track will remain in place and thus there will be no salvage. The undersigned counsel has consulted with the Board’s Section of Environmental Assessment on this matter and has been advised that no Environmental Report is required in these circumstances. See 49 CFR sections 1105.6(c)(2) (exempting any action “that does not result in significant changes in carrier operations”) and 1105.8(b) (exempting actions where there will be no impact on historic properties); *Timber Rock Railroad, Inc. – Discontinuance of Service Exemption – In Burlison, Brazos, Grimes, Montgomery, Liberty, Hardin and Jefferson Counties, TX*, STB Docket No. AB-998X (served Jan. 25, 2007)

(finding that a discontinuance was exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b)). Moreover, should the line be abandoned at some future point, CCEDC will remain obligated comply with the terms of the ICC's 1995 decision in Finance Docket No. 32659 to comply with environmental requirements applicable at that time to any abandonment proceeding.⁵

DRAFT FEDERAL REGISTER NOTICE

A Draft Federal Register Notice is attached as Exhibit D to this Petition.

FEDERALLY GRANTED RIGHT-OF-WAY

Based on information in CCRC's possession, the line does not contain federally granted right-of-way.⁶ Any documentation in CCRC's possession will be made available promptly to those requesting it.

NEWSPAPER PUBLICATION

Notice of the proposed discontinuance ran on March 20, 2007 in the *News-Topic*, a newspaper of general circulation in Caldwell County, North Carolina. A copy of the notice is attached as Exhibit E to this Petition.

LABOR PROTECTION

CCRC does not anticipate that any employees will lose their jobs if this Petition is granted. The interests of any CCRC employees who may be adversely affected by CCRC's discontinuance of service will be adequately protected by the labor protective conditions contained in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

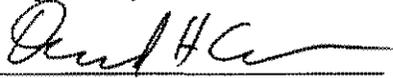
⁵ To the extent that it may be required to provide any notification of the environmental or historic resources impacts of the proposed discontinuance to the Board under the terms of the ICC's 1995 Exemption decision in Finance Docket No. 32659, CCEDC has advised CCRC that it joins in this statement regarding environmental impacts.

⁶ The right of way for CCRC was granted by State of North Carolina Charter.

CONCLUSION

For the aforementioned reasons, CCRC respectfully requests that the Board issue an order exempting the proposed discontinuance of service over a 5.2 mile section of the HG Line from the prior approval requirements of 49 U.S.C. § 10903. Detailed regulatory inquiry is not necessary in order to implement the rail transportation policy of 49 U.S.C. § 10101, the proposed discontinuance of service is of limited scope and it will not cause any shippers to be subject to an abuse of market power.

Respectfully submitted,



Betty Jo Christian
David H. Coburn
Scott M. Mirelson
STEPTOE & JOHNSON LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 429-8113

Attorneys for Caldwell County Railroad Company

March 21, 2007

VERIFICATION

I, Donald J. McGrady, verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I also verify that I am qualified and authorized to file this Petition for Exemption.

Executed on March 16, 2007

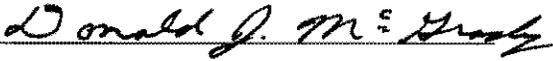
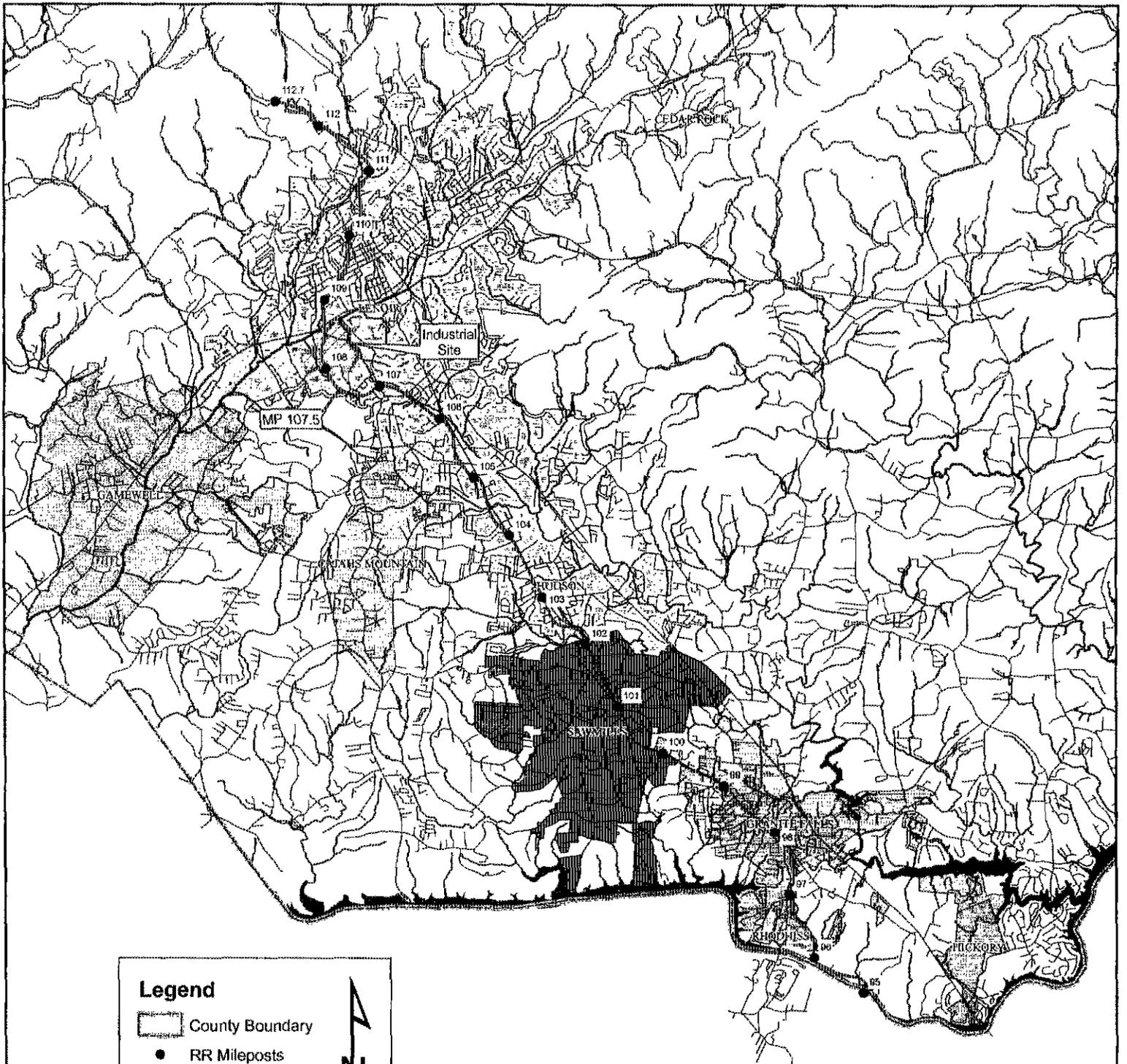
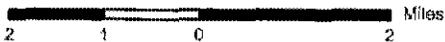

Donald J. McGrady

EXHIBIT A



Legend

-  County Boundary
-  RR Mileposts
-  Railroad
-  Proposed Discontinuance
-  Industrial Site
-  Streams

CALDWELL COUNTY RAILROAD

This map has been developed from public records and data sources including recorded deeds, plats, and other public records. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained herein. While efforts have been made to use the most current and accurate data, Caldwell County, NC assumes no legal responsibility for the information contained on this map.

Gris is based on the North Carolina State Plane Coordinate System, 1983 North American Datum. Information provided is NOT of land survey quality and is NOT suitable for such use.

EXHIBIT B

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-999X

**CALDWELL COUNTY RAILROAD COMPANY --
DISCONTINUANCE OF SERVICE EXEMPTION --
IN CALDWELL COUNTY, NC**

VERIFIED STATEMENT OF WILLIAM S. STONE

My name is William S. Stone. I am the Vice Chairman and Rail Contact Person of the Caldwell County Economic Development Commission (CCEDC). I received a B.A. Degree from the University of North Carolina at Chapel Hill and an M.A. Degree from Appalachian State University. For 30 years, I was a Public School Administrator, focusing on Federal Education Program Management, in the Caldwell County Schools. I am a former Chairman of the Caldwell County Board of Commissioners, Caldwell County Social Service Board, and the Caldwell County Board of Health. I am in my 13th year of service as a Trustee at Caldwell Community College.

CCEDC is a nonprofit corporation that was established in 1985 as the Caldwell County Industrial Development Commission. CCEDC was established in order to preserve local rail service which Class I rail carriers had abandoned or planned to abandon. Today, CCEDC has as its mission the facilitation of the marketing of Caldwell County in order to encourage job creation, retention and investment. Our Vision is to “[e]stablish our county as a desirable

destination for business, industry, retirement, and tourism.” In 2007, our Strategic Priorities are (1) Existing Industry Retention and Expansion; (2) Business and Industry Recruitment; (3) Rail Management & Promotion, (4) Retail & Commercial Development; (5) Strategic Marketing; (6) Product Development; (7) Workforce Development; and (8) Communications and Public Relations. See <http://www.caldwelledc.org>.

CCEDC’s offices are located at 1909 Hickory Boulevard, P.O. Box 2888, Lenoir, NC 28645. Our telephone number is 828-728-0768. CCEDC has a nine member board of directors and a full-time executive director. Caldwell County, North Carolina is located in the Western part of the state and covers approximately 475 square miles. It has a population of approximately 77,000 people. Caldwell County is home to the renowned “20 Miles of Furniture” stores along U.S. Highway 321. The furniture business makes up our manufacturing base.

In recent years, the unemployment rate in Caldwell County has increased substantially due to job losses in the furniture industry. In 1999, the unemployment rate in the county was 1.8%. By 2001, unemployment had risen to 7.3%, peaking at a dangerously high 9.8% in 2003. In 2004, the county-wide unemployment rate was 8.4%. In 2000, manufacturing jobs represented almost 50% of our employment. Some of the largest employers in Caldwell County include Broyhill Furniture Industries, Bernhardt Furniture Industries and the Sealed Air Corporation (“Sealed Air”).

Given the economic challenges that we face, CCEDC strongly supports the Caldwell County Railroad Company’s (“CCRC”) Petition for Exemption seeking authorization to discontinue the service it provides between milepost 107.5 and 112.7 near Sealed Air’s Valmead Plant. CCEDC purchased the “HG Line” (MP. 90.6 to 112.7), of which this segment is a part in

1995. See *Caldwell County Econ. Dev. Comm'n--Acquisition Exemption--Norfolk Southern Ry. Co.*, Finance Docket No. 32658 (ICC served Feb. 14, 1995). The Board's predecessor, the Interstate Commerce Commission, approved our exemption from the requirements of 49 U.S.C. Subtitle IV in *Caldwell County Econ. Dev. Comm'n--Exemption From 49 U.S.C. Subtitle IV*, Finance Docket No. 32659 (ICC served Aug. 3, 1995). CCRC operates over the track pursuant to a lease agreement between CCRC and CCEDC. CCEDC originally entered into a "Lease and Operating Agreement" for the service with Southeast Shortlines, Inc. (Southeast) on June 17, 1994. Southeast assigned its rights and responsibilities under the lease to CCRC, with CCEDC's consent, in an agreement (entitled "Assignment of Lease and Operating Agreement") dated October 26, 1994. The lease, which was for an initial term of 5 years, automatically renews unless CCRC provides advance notice to CCEDC that it does not want to renew.

CCEDC supports CCRC's Petition for Exemption because it will help facilitate the location of a new industrial site along the rail line. In September 2006, a new industrial site was created near milepost 108 of the HG line. The site is in excess of 200 acres and would be one of the largest industry investments ever to come to the State of North Carolina. The development of the site will significantly benefit Caldwell County's struggling economy. However, the industry locating at the site does not require rail service and has in fact requested that rail service through the campus it will be developing be discontinued due to security and vibration issues. Granting the exemption therefore will facilitate industrial activity in Caldwell County.

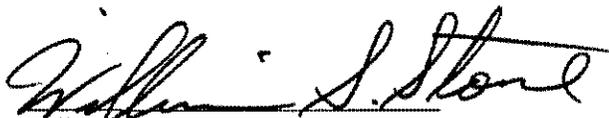
Sealed Air, the only shipper to be affected by the proposed discontinuance of service, will suffer no negative effects due to the discontinuance. CCEDC has worked hard to ensure that Sealed Air will have truck service to substitute for the discontinued train service. To that end, CCEDC has provided financial support for the creation of a modern offload facility at milepost

105 of the HG Line. Shipments to and from Sealed Air's Valmead Plant will travel by truck between the plant and the offload facility. Further, Caldwell County and the City of Lenoir have entered into an agreement with Sealed Air in which assistance is being provided to the company to modify its plant to process truck rather than rail shipments.

CCEDC is not proposing abandonment of the line segment so as to keep open the option for renewed rail service in the future should circumstances so warrant.

VERIFICATION

I, William S. Stone, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

A handwritten signature in black ink, appearing to read "William S. Stone". The signature is written in a cursive style with a horizontal line underlining the name.

William S. Stone
Vice Chairman
Caldwell County Economic Development
Commission

Executed on March 13 2007

EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-999X

**CALDWELL COUNTY RAILROAD COMPANY --
DISCONTINUANCE OF SERVICE EXEMPTION --
IN CALDWELL COUNTY, NC**

VERIFIED STATEMENT OF KEVIN J. HOLIAN

My name is Kevin J. Holian. I am the Vice President of Global Logistics for Sealed Air Corporation (US) ("Sealed Air"). I submit this Verified Statement in support of the Petition for Exemption of Caldwell County Railroad Company ("CCRC") filed in this docket in which CCRC seeks permission to discontinue operations over a portion of its line in Caldwell County, including the portion on which rail service is currently provided to Sealed Air's plant located in Valmead, North Carolina.

Sealed Air is an international publicly traded corporation that specializes in protective packaging and food packaging. Well-known Sealed Air products include Bubble Wrap®, which protects products during shipping and storage, and Cryovac® food packaging products that have helped keep the distribution of fresh meats, poultry and other foods safe for more than 50 years. See <http://www.sealedair.com/corp/profile.html>. In 2006, Sealed Air had revenues of 4.3 billion dollars. We have operations in 51 countries, more than 17,000 employees, over 100 manufacturing facilities worldwide and trade on the New York Stock Exchange under the ticker

symbol SEE. *See id.* Our corporate headquarters is located at 200 Riverfront Boulevard, Elmwood Park, New Jersey 07407. I have been with Sealed Air for approximately two years. I am responsible for logistics on a global basis for Sealed Air.

Sealed Air's Valmead Plant, a Protective Packaging Bubble Wrap® factory, is located at milepost 112.7 at the terminus of CCRC's HG Line in Lenoir, North Carolina. We currently receive 2-3 rail cars per week from CCRC.

On March 12, 2007, Sealed Air entered into an arrangement with Caldwell County, North Carolina and the City of Lenoir, North Carolina which will fully protect our transportation interests following a discontinuance of rail service by CCRC on the portion of its line that serves our plant. Under the terms of the arrangement, Sealed Air will receive assistance with plant modifications so its traffic can be transported by truck between our plant in Valmead and a new rail offload facility being built at CCRC milepost 105 by the Caldwell County Economic Development Commission. The new offload facility has access to U.S. Route 321A and North Carolina Route 18. The facility will allow the loading and offloading of railcars containing freight coming from and going to Sealed Air's plant. It is a five mile drive by truck over the routes noted above between the offload facility and the Valmead Plant. The 2-3 railcars per week that serve the Valmead Plant will be replaced by approximately 10-15 trucks per week, at an average rate of 5 trucks for every railcar. This truck traffic will serve as an adequate replacement for the rail service we currently receive. Sealed Air's support of this Petition is conditioned upon the understanding that the effective date for CCRC's discontinuance of rail service over the subject portion of its line shall not precede the completion and in-service date of the new offload facility.

Sealed Air fully supports CCRC's Petition for Exemption and looks forward to the Board's approval of the Petition.

VERIFICATION

I, Kevin J. Holian, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Statement.


Kevin J. Holian
Vice President, Global Logistics
Sealed Air Corporation (US)

Executed on March 21, 2007

EXHIBIT D

STB NO. AB-999X

**CALDWELL COUNTY RAILROAD COMPANY --
DISCONTINUANCE OF SERVICE EXEMPTION --
IN CALDWELL COUNTY, NC**

**NOTICE OF PETITION FOR EXEMPTION TO ABANDON OR TO
DISCONTINUE SERVICE**

On March 21, 2007 Caldwell County Railroad Company ("CCRC") filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the discontinuance of service on a line of railroad known as the "HG Line", extending from railroad milepost 107.5 near Lenoir, North Carolina to the end of the line at railroad milepost 112.7 near Valmead, North Carolina, which traverses through United States Postal Service ZIP Code 28645, a distance of 5.2 miles, in Caldwell County, North Carolina. The line for which the discontinuance exemption request was filed does not include any current stations.

The line does not contain 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 *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.

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

All filings in response to this notice must refer to STB Docket No. AB-999X, and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001, and (2) Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Ave., N.W., Washington, DC 20036.

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

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided:

EXHIBIT E

service on a 5.2 mile line of railroad between milepost 107.5 near Lenoir, North Carolina and milepost 112.7 near Valmead, North Carolina. The line segment traverses through United States Postal Service ZIP Code 28645 in Caldwell County, North Carolina. The proceeding has been docketed as No. AB-999X.

should be served on the applicant representative: Betty Jo Christie Steptoe Johnson LL 1330 Connecticut Avenue, NW Washington, D 2003

March 20

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) 245-0295.

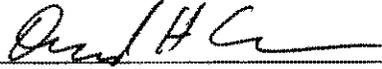
Appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions also can be filed with the Board. Because this is a discontinuance of service, proceeding and not an abandonment, there will be no consideration of requests for trail, disposal, 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, 398 E Street, S.W., Washington, DC 20423 (See 49 CFR 1104.11a) and one copy must be served on applicant's representative (See 49 CFR 1104.12(a)). Questions regarding offers of financial assistance may be referred to the Board's Office of Public Services at 202-245-0230.

Copies of any comments or requests for conditions

NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE
Caldwell County Railroad Company (CCRC) gives notice that on or about March 22, 2007, it intends to file with the Surface Transportation 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

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that the notice of the proposed discontinuance of service in AB-999X, *Caldwell County Railroad Company—Discontinuance of Service Exemption—in Caldwell County NC*, was advertised on March 20, 2007 in the *News-Topic*, a newspaper of general circulation in Caldwell County, NC, as required by 49 C.F.R. §1105.12.



David H. Coburn

March 21, 2007

CERTIFICATE OF SERVICE

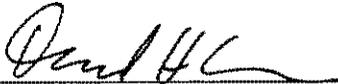
Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the Petition for Exemption in Docket No. AB-999X, *Caldwell County Railroad Company—Discontinuance of Service Exemption—in Caldwell County NC*, was mailed via first class mail, postage prepaid, on March 21, 2007 to the following parties:

Patrick Simmons
Director, Rail Division
North Carolina Department of Transportation
1553 Mail Service Center
Raleigh, NC 27699-1553

Military Surface Deployment and Distribution Command
Transportation Engineering Agency
Attn: Railroads for National Defense
Suite 130
720 Thimble Shoals Boulevard
Newport News, VA 23606-4537

Charles Stockman
Acting Chief
Conservation and Outdoor Recreation Program
National Park Service
Ninth Floor, Org. Code 2220
1201 Eye Street N.W.
Washington, D.C. 20005

Gail Kimbell
Chief
USDA Forest Service
1400 Independence Avenue S.W.
Washington, D.C. 20250-0003



David H. Coburn