

LAW OFFICE  
**THOMAS F. MCFARLAND, P.C.**  
208 SOUTH LASALLE STREET - SUITE 1890  
CHICAGO, ILLINOIS 60604-1112  
TELEPHONE (312) 236-0204  
FAX (312) 201-9695  
*mcfarland@aol.com*

THOMAS F. MCFARLAND

October 8, 2009

By e-filing

Anne K. Quinlan, Esq.  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W., Suite 100  
Washington, DC 20024

225842

Re: Docket No. AB-1044, *Indiana Business Railroad, Inc. -- Adverse Discontinuance of Rail Service -- Portion of Norfolk Southern Railway Company's Rockport Branch*

Dear Ms. Quinlan:

On August 14, 2009, Indiana Business Railroad, Inc. (IBR) filed a Petition for Partial Waiver of Abandonment Regulations and For Exemptions in the captioned proceeding.

Pursuant to 49 C.F.R. § 1152.24(e)(5), a decision by the Director of the Board's Office of Proceedings granting or denying a waiver petition is to be issued within 30 days of the date on which the Petition is filed.

No decision on the Petition has been issued within that time frame.

That suggests to IBR that Norfolk Southern Railway Company's Reply to that Petition is being treated as a Motion to Dismiss IBR's Adverse Abandonment application before that application has been field. If that is the case, IBR hereby seeks the opportunity to be heard on that Motion prior to its disposition.

It should be noted that while Norfolk Southern's Reply suggests that a feeder line application rather than an adverse abandonment application would be the proper form of remedy in this proceeding, Norfolk Southern took the opposite position in moving to dismiss a feeder line application in *PSI Energy, Inc. - Feeder Line - Norfolk Southern Corp.*, 7 I.C.C.2d 227 (1991), and the Board's predecessor, in dismissing the application, said (at 234):

We also note that PSI has the option of filing an application pursuant to § 10903 to force NS to abandon the track. See *Modern Handcraft, Inc. - Abandonment*, 363 I.C.C. 969 (1981).

THOMAS F. MCFARLAND

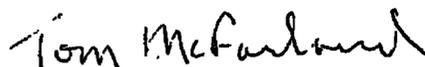
Anne K. Quinlan, Esq.

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IBR and the shipping public in the Lincolnland Area of the Rockport Branch should be heard on this important issue before action is taken.

Very truly yours,

A handwritten signature in black ink that reads "Tom McFarland". The signature is written in a cursive style with a large, prominent "T" and "M".

Thomas F. McFarland  
*Attorney for Indiana Business  
Railroad, Inc.*

*TMcF:kl:wp8.0\1384\efstb1*

cc: James Paschall, Esq., by e-mail to [james.paschall@nscorp.com](mailto:james.paschall@nscorp.com)