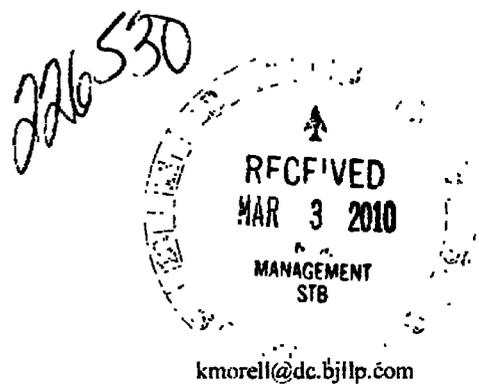


BALL JANIK LLP
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TELEPHONE 202-638-3307
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KARI MORLLL



March 3, 2010

BY HAND DELIVERY

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-001

FEE RECEIVED

MAR 3 2010

SURFACE
TRANSPORTATION BOARD

Re: STB Docket No. AB-1057X, Missouri & Valley Park Railroad Corporation – Discontinuance Of Lease Operations Exemption -- In St. Louis County, Missouri

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Petition for Exemption under 49 U.S.C. § 10502. Also attached is a check covering the \$6,400 filing fee.

Please time and date stamp the extra copy of the Petition and return it with our messenger.

If you have any questions, please call me.

Sincerely,

Karl Morell

Enclosures

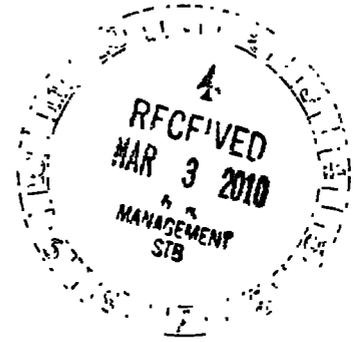
Exemption
Office of Proceedings

MAR 3 2010

Part of
Public Hearing

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1057X



MISSOURI & VALLEY PARK RAILROAD CORPORATION
-- DISCONTINUANCE OF LEASE OPERATIONS EXEMPTION --
IN ST. LOUIS COUNTY, MISSOURI

PETITION FOR EXEMPTION

FEE RECEIVED
MAR 3 - 2010
SURFACE
TRANSPORTATION BOARD

FILED
MAR 9 - 2010
SURFACE
TRANSPORTATION BOARD

Office of the
General Counsel
March 9, 2010
Peter
Public Counsel

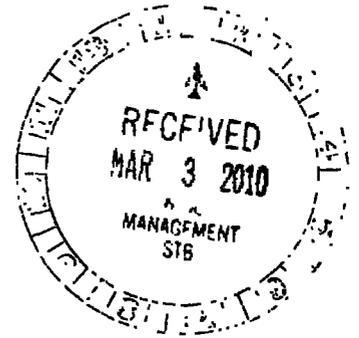
Karl Morell
Of Counsel
Ball Janik LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
MISSOURI & VALLEY PARK
RAILROAD CORPORATION

Dated: March 3, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1057X



MISSOURI & VALLEY PARK RAILROAD CORPORATION
-- DISCONTINUANCE OF LEASE OPERATIONS EXEMPTION --
IN ST. LOUIS COUNTY, MISSOURI

PETITION FOR EXEMPTION

Missouri & Valley Park Railroad Corporation ("MVP") petitions the Surface Transportation Board ("STB" or "Board") to exempt, under 49 U.S.C. § 10502, from the prior approval requirements of 49 U.S.C. § 10903, MVP's discontinuance of service over 3.5 miles of rail lines owned by BNSF Railway Company ("BNSF") located on the south side of BNSF's Cuba Subdivision between milepost 18.36 and milepost 20.50, near West Valley Park, St. Louis County, Missouri (the "Lines").

PROPOSED TRANSACTION

MVP proposes to discontinue its lease operations over the Lines. The Lines traverse U.S. Postal Service Zip Code 63088. A map of the Line is attached as Exhibit A.

Based on information in BNSF's possession, the Line does not contain any federally granted right-of-way. Any documentation in MVP's possession will be made available to those requesting it.

STATEMENT OF FACTS

MVP leased the Lines from BNSF in 2002. *See* STB Finance Docket No. 34231.

Missouri & Valley Park Railroad Corporation – Lease Exemption – The Burlington Northern and Santa Fe Railway Company (not printed), served August 5, 2002.¹ Upon the expiration of MVP's lease, BNSF elected to lease the Lines to another Class III rail carrier. *See* STB Finance Docket No. No. 35333, *Burlington Shortline Railroad, Inc. d/b/a Burlington Junction Railway – Lease and Operation Exemption – BNSF Railway Company* (not printed), served December 31, 2009. MVP ceased all operations on the Lines on January 29, 2010, and Burlington Shortline, Inc. d/b/a Burlington Junction Railway ("BJRY") commenced operations on the Lines on January 30, 2010.

EXEMPTION REQUESTED

A rail carrier may not discontinue service over non-accepted rail lines without the prior approval of the Board. 49 U.S.C. § 10903(d); *see also Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134 (1946).

Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation when it finds that:

- (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and
- (2) either:
 - (a) the transaction is of limited scope; or

¹ The Board's 2002 decision identifies the length of the Lines as 2.14 miles. The Lines are actually 3.5 miles in length.

(b) regulation is not necessary to protect shippers from the abuse of market power.

The legislative history of Section 10502 reveals a clear Congressional intent that the STB should liberally use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. In enacting the Staggers Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, Congress encouraged the STB's predecessor to liberally use the expanded exemption authority under former Section 10505:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). *See also Exemption From Regulation – Boxcar Traffic*, 367 I.C.C. 424, 428 (1983), *vacated and remanded on other grounds, Brae Corp. v. United States*, 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which re-enacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104th Cong., 1st Sess. 168-69 (1995).

A. The Application Of 49 U.S.C. § 10903 Is Not Necessary to Carry Out The Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption would minimize the unnecessary expenses associated with the filing of a formal discontinuance application and expedite regulatory decisions [49 U.S.C. § 10101(2)].

*See, e.g., Norfolk & W. Ry. Co. – Abandonment Exem. – Cinn., Hamilton County, OH, 3 S.T.B. 110 (1998); STB Docket No. AB-367 (Sub-No. 2X), Georgia Central Railroad, L.P. – Abandonment Exemption – In Chatham County, GA (not printed), served September 17, 1997 (“Georgia Central”). Granting the exemption will thus foster sound economic conditions and encourage efficient management. MVP will be able to terminate its common carrier obligation to provide service over the Lines at the time BJRY assumes its common carrier obligation. 49 U.S.C. § 10101(5) and (9). See, e.g., STB Docket No. AB-318 (Sub-No. 4X), Louisiana & Delta Railroad, Inc. – Abandonment Exemption – In Lafourche and Assumption Parishes, LA (not printed), served August 26, 1997; STB Docket No. AB-364 (Sub-No. 15X), Mid-Michigan Railroad, Inc. – Discontinuance of Service Exemption – In Kent and Ottawa Counties, MI (not printed), served June 1, 2009. Other aspects of the rail transportation policy will not be affected adversely. For example, competition and the continuation of a sound rail transportation system are not affected since BJRY has assumed MVP’s former operations on the Lines. Consequently, the public will continue to receive rail service *albeit* from another Class III rail carrier.*

B. This Transaction Is Of Limited Scope

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line and the traffic volume. *See, e.g., Docket No. AB-347 (Sub-No. 1X), Florida West Coast Railroad Company – Abandonment Exemption – Gilchrist and Levy Counties, FL (not printed), served January 16, 1992; Docket No. AB-6 (Sub-No. 349X), Burlington Northern Railroad Company – Abandonment Exemption – In Greene and Polk Counties, MO (not printed), served August 27, 1993.*

The proposed transaction is clearly of limited scope. MVP is seeking to discontinue its lease operations over 3.5 miles of rail lines located in one county in Missouri. The shortness of the Lines and the limited geographic area involved demonstrate the limited scope of the proposed discontinuance. *See, e.g.*, Docket No. AB-397 (Sub-No. 3X), *Tulare Valley Railroad Company – Abandonment Exemption – In Tulare And Fresno Counties, CA* (not printed), served February 9, 1995.

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

The proposed discontinuance will not reduce the number of competitive rail options available to any shipper. BJRY has replaced MVP as the operator on the Lines. Therefore, regulation is not necessary to protect shippers from an abuse of market power. *See, e.g.*, STB Docket No. AB-55 (Sub-No. 576) *CSX Transportation, Inc. – Abandonment Exemption – In Guernsey County, OH* (not printed), served November 22, 1999; STB Docket No. AB-55 (Sub-No. 563X), *CSX Transportation, Inc. – Abandonment Exemption – In Harrison County, WV* (not printed), served September 25, 1998; *Georgia Central*.

The proposed discontinuance poses no threat of market power abuse by any carrier. *See, e.g.*, Docket No. AB-6 (Sub-No. 340X), *Burlington Northern R. Co. – Discontinuance of Trackage Rights Exemption – Between East Dubuque, IA* (not printed), served September 1, 1992 (regulation not necessary to protect shippers from abuse of market power where service would continue under car haulage agreement).

ENVIRONMENTAL AND HISTORIC REPORTING REQUIREMENTS

This proceeding is excepted from environmental reporting requirements under 49 C.F.R. § 1105.6(c) because the line will continue to be operated. Moreover, BNSF owns the Lines and retains the underlying common carrier obligation. Since BNSF owns the Lines and retains the

underlying common carrier obligation, no historic documentation is required pursuant to 49 C.F.R. § 1105.8(b).

FEDERAL REGISTER NOTICE

A draft Federal Register notice is attached to this Petition as Exhibit B.

LABOR PROTECTION

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect employee interests. The Board and its predecessor agency, the Interstate Commerce Commission, however, declined, except in unusual circumstances, to impose labor conditions where a carrier abandons or discontinues service over its entire line. MVP proposes to discontinue service over its entire rail lines. Also, no corporate affiliate of MVP will continue substantially similar rail operations and there is no corporate parent that would benefit from the proposed discontinuance. *See Northampton and Bath R. Co. – Abandonment*, 354 I.C.C. 784 (1978); *Wellsville, Addison & Galetton R. Corp. – Abandonment*, 354 I.C.C. 744 (1978); Docket No. AB-403X, *Willamette Valley Railroad Company – Abandonment Exemption – In Polk County, OR* (not printed), served April 5, 1996.

CONCLUSION

Application of the regulatory requirements and procedures of 49 U.S.C. § 10903 is not required to carry out the rail transportation policy set forth in 49 U.S.C. § 10101, as previously described in this Petition. Nor is STB regulation required to protect shippers from the abuse of market power. Moreover, the proposed discontinuance is of limited scope. Accordingly, MVP respectfully urges the Board to grant the discontinuance.

Respectfully submitted,



Karl Morell
Of Counsel
Ball Janik LLP
1455 F Street, N.W.
Suite 225
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
MISSOURI & VALLEY PARK
RAILROAD CORPORATION

Dated: March 3, 2010

EXHIBIT A

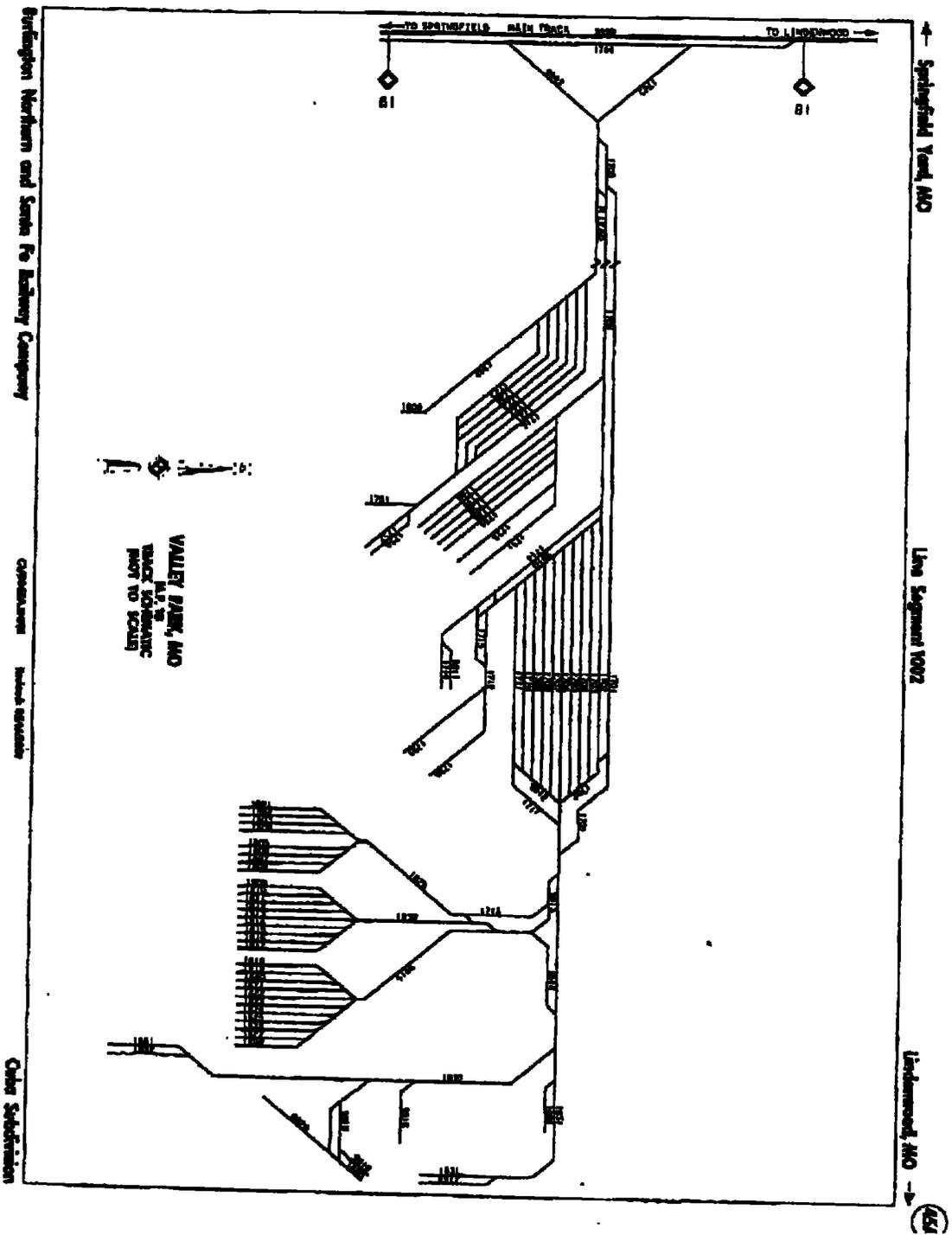


EXHIBIT B

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-1057X

MISSOURI & VALLEY PARK RAILROAD CORPORATION --DISCONTINUANCE OF LEASE OPERATIONS EXEMPTION-- IN ST. LOUIS COUNTY, MISSOURI

On March 3, 2010, Missouri & Valley Park Railroad Corporation (MVP) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for MVP to discontinue service over approximately 3.5 miles of railroad lines owned by BNSF Railway Company located on the south side of BNSF's Cuba Subdivision between milepost 18.36 and milepost 20.50, near West Valley Park, St. Louis County, Missouri. The lines traverse U.S. Postal Service Zip Code 63088 in St. Louis County, Missouri.

The lines do not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

Where, as here, MVP is discontinuing service over all of its rail lines, the Board does not normally impose labor protection under 49 U.S.C. 10502(g), unless the evidence indicates the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Wellsville, Addison & Galetton R. Corp. – Abandonment, 354 I.C.C. 744 (1978); and Northampton and Bath R. Co. – Abandonment, 354 I.C.C. 784 (1978). Because MVP does not appear to have a corporate affiliate or parent that will continue similar operations or that could benefit from the proposed abandonment, employee protective conditions will not be imposed.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June __, 2010.

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Any offer of financial assistance for subsidy under 49 C.F.R. 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by the filing fee, which currently is set at \$1,500. *See* 49 C.F.R. 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB-1057X and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005. Replies to the petition are due on or before _____, 2010.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 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 at (202) 245-0305 [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

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

Decided: _____ 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings,

CERTIFICATE OF SERVICE

I hereby certify that, on this 3rd day of March, 2010, I had the foregoing Petition for Exemption served by first class mail, postage pre-paid on the following parties:

<p>State Public Service Commission</p> <p>Federal Assistance Clearinghouse Office of Administration P.O. Box 809 Jefferson City, MO 65102</p> <p>Missouri Public Service Commission Governor Office Building 200 Madison Street Jefferson City, MO 65101-0360</p> <p>Military Traffic Management Command</p> <p>MTMCTEA ATTN: SDTE-SE Railroads for National Defense 709 Ward Drive, Building 1990 Scott AFB, IL 62225-5357</p>	<p>National Park Service</p> <p>Chief of National Recreation and Trails U.S. Dept. of Interior - Nat'l. Park Service Recreation Resources Assistance Division 1849 C Street, NW Washington, DC 20240-0001</p> <p>National Park Service</p> <p>National Park Service 601 Riverfront Drive Omaha, NE 68102-4226</p> <p>U.S. Department of Agriculture</p> <p>U.S. Department of Agriculture Chief of the Forest Service 4th Floor N.W., Auditors' Building 14th St. and Independence Ave., S.W. Washington, DC 20250</p>
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Karl Morell

CERTIFICATE OF PUBLICATION

The undersigned hereby certifies that notice of the proposed discontinuance in STB Docket No. AB-1057X was published on March 1, 2010, in the The Telegraph, a newspaper of general circulation in St. Louis County, Missouri as required by 49 C.F.R. § 1105.12.

Dated: March 3, 2010

A handwritten signature in cursive script that reads "Karl Morell". The signature is written in black ink and is positioned above a horizontal line.

Karl Morell