

OVERVIEW:

Abandonments & Alternatives to Abandonments



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- P R E F A C E -

This handout was prepared by the Surface Transportation Board's (STB) Office of Public Services (OPS). OPS was created to help the public participate meaningfully in STB proceedings.

As part of that effort, this paper explains the standards and procedures governing abandonments. It also discusses alternative means of preserving service, including the subsidy and purchases of lines that might otherwise be abandoned.

This paper is not an agency statement approved by the STB, but OPS believes it provides a good overview of these subjects. For readers who want to explore these issues in more detail, OPS has also prepared an information bulletin entitled "So You Want to Start a Small Railroad, Surface Transportation Board Small Railroad Application Procedures"

If you want copies of these publications or have questions, please contact OPS at (202) 565-1592. One of our staff attorneys will be glad to help you.

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I. OVERVIEW

By the mid-1970's, our nation's rail transportation system was in dire financial condition. Rail carriers were faced with increased competition from other modes of transportation (especially trucking), rising labor, fuel and maintenance expenses, and pervasive regulation that made it difficult for rail carriers to get rid of unprofitable lines. These conditions had contributed to the bankruptcy of several prominent rail carriers.

Against this background, Congress enacted a series of new laws, most notably the Staggers Rail Act of 1980 (Staggers Act). Together with the implementing regulations issued by the Interstate Commerce Commission, the STB's predecessor, this legislation sought to increase the role of the marketplace, rather than government regulation, in shaping rail transportation. In essence, the Staggers Act gave railroads more flexibility to set prices and adjust service as the market requires and thus enabled them to act more competitively. At the same time, the necessity for some regulatory protection was recognized because rail carriers still have significant market power in particular situations and because rail transportation is sometimes vital to the public. The current regulatory scheme governing abandonments and acquisitions to preserve service seeks to balance these competing considerations.

Where the market has spoken clearly and regulation is found to be unnecessary, a rail carrier may usually abandon a line, subject to appropriate labor protection and environmental conditions. Indeed, lines over which no local traffic has moved for two years without any formal complaint have been exempted from traditional regulatory scrutiny and can be abandoned simply by filing a notice with the STB.

Under the more detailed abandonment application process for active lines, the Board balances the economic burden of continued operation against the public's need for the service. Permission usually will be given to abandon lines on which there are significant operating losses. On the other hand, the carrier's ability to earn more money by disinvesting from a line and reinvesting its assets elsewhere usually is not sufficient to allow abandonment in the face of a strong public need for service.

Although it may be easier for carriers to abandon unprofitable rail lines, it is also now much easier for States and private parties to preserve rail service. The Feeder Railroad Development

Program enables any financially responsible person to force a rail carrier to sell a line that has been designated for possible abandonment, even though no abandonment application has been filed. Similarly, once an abandonment application is filed for a line, financially responsible parties can offer to subsidize the carrier's service or force the railroad to sell them the line for continued rail service. To encourage entrepreneurs and the States to operate these lines, the Board has frequently exempted them from many regulatory requirements. Also, they can often avoid expensive labor protective conditions.

With this general background, we will first set out the standards and procedures that govern formal applications to abandon a line (Part II). We will then discuss exemptions, a widely used alternative to the more detailed abandonment application process (Part III). Several alternative ways of preserving rail service will be reviewed (Part IV), including the purchase or subsidy of lines slated for abandonment. The role labor plays in these cases will be examined (Part V). Finally, we explore alternative means of preserving rail rights-of-way through rail banking (Part VI).

In 1995, Congress enacted the "ICC Termination Act" which abolished the Interstate Commerce Commission and established the Surface Transportation Board to handle rail abandonments, *inter alia*. The new statutory reference is 49 U.S.C. 10903. The new rules are codified at 49 CFR Parts 1105 and 1152. A quick summary of the changes to 49 CFR 1152, which became effective on January 23, 1997, is included at Appendix I. The full text of the new rule is at Appendix IV.

II. ABANDONMENTS

Under the ICC Termination Act of 1995 (Act), a railroad may abandon a line only with the STB's permission. The Board must determine whether the "present or future public convenience and necessity require or permit" the abandonment. In making this determination, the Board balances two competing factors. The first is the need of local communities and shippers for continued service. That need is balanced against the broader public interest in freeing railroads from financial burdens that are a drain on their overall financial health and lessen their ability to operate economically elsewhere.

The railroad first must show how continued operation of the line would be a burden to it. If it cannot establish this, the abandonment will be denied. However, the railroad does not have to show an actual operating loss. It may also calculate its "opportunity costs" for the line. These are the costs of tying up the railroad's assets in the line when those assets could earn more money elsewhere.

If the railroad does demonstrate a burden, then evidence of the public's need for continued service is examined. The effect on local businesses, surrounding communities, the local economy, and the environment may be considered. Parties opposing abandonment should present that evidence and should also challenge the railroad's financial data.

With this general introduction, we will now address in more detail the steps in the abandonment process and the kinds of factors and evidence the Board considers in deciding these cases.

A. Steps In The Abandonment Process

The Act establishes strict filing and procedural requirements for abandonment applications. (49 U.S.C. 10904). The STB has adopted regulations to implement these requirements. These regulations are found at 49 CFR 1152.

Once an abandonment application is filed, interested parties have only 45 days to file protests. Yet, an effective opposition to abandonment requires substantial preparation. The Act, therefore, also gives communities and shippers advance notice of a railroad's abandonment plans.

1. System Diagram Map

The earliest indication that a railroad intends to abandon a line comes from the carrier's system diagram map. The Act requires a rail carrier to maintain a map of all its rail lines. A Class III carrier may choose to prepare a narrative description of its lines instead of a map. On this system diagram map or in its narrative report, the carrier must identify separately (1) any line for which it expects to file an abandonment application within the next three years and (2) any line that it considers to be a potential candidate for abandonment. The Board will reject an abandonment application if any part includes a line that has not been identified as a category 1 line (abandonment application planned within 3 years) for at least 60 days before the carrier filed the abandonment application. A carrier must publish its system diagram map or narrative in a newspaper of general circulation in each county containing a rail line in category 1, and publish all subsequent changes to its system diagram map. (The system diagram map rules are found at 49 U.S.C. 10903(c)(2) and 49 CFR 1152.10-13.)

Thus, the first indication that a railroad intends to abandon a line comes at least 60 days before the carrier's application is filed. This time should not be wasted. It gives shippers, local and State governments, and interested citizens an opportunity to meet to weigh possible opposition to abandonment, and to consider alternative means of continuing rail operations by the current railroad or another operator. For example, rate and service changes which might permit the railroad to operate more efficiently or profitably may be negotiated.

A line need not have been listed in category 2 (potentially subject to abandonment) prior to abandonment, so no weight should be attached to the fact that a line was or was not listed in category 2.

2. Notice of Intent

In addition to the system diagram map requirement, the STB requires the railroad to file a "Notice of Intent" to abandon. The railroad must publish this notice once a week for three consecutive weeks in general circulation newspapers in each country where the line is located, send it to each of the significant shippers on the line, send it to the State agency responsible for rail transportation planning, and post it at each agency station and terminal on the line. All these notice requirements must be fulfilled 15-30 days before the application is filed at the STB.

The complete form and all the information this notice must contain are set out in Section 1152.21 of the regulations. The notice describes when and how to file a protest to the proposed abandonment. It also explains how to obtain information on possible subsidy or purchase of the line. Once the Notice of Intent to abandon is received, shippers, communities, and interested citizens should organize their activities concerning the abandonment and prepare to present their position to the STB and the railroad. For help in preparing a Notice of Intent or preparing an opposition to an abandonment, please contact OPS at (202) 565-1592.

3. Abandonment Application

The abandonment application must contain detailed information about the costs and revenues on the line to be abandoned and the overall financial condition of the carrier. (A complete recitation of what must be in the application is found at 49 CFR 1152.22.) Any interested person may request a copy of the application from the carrier, and persons planning to participate should obtain a copy as soon as the application is filed and immediately begin to examine the information carefully.

Abandonment applications may contain pages of figures, tables, charts, and graphs, some of which may be less important than other parts. Opponents should make an effort to verify and, if appropriate, recalculate and reconcile key figures and totals. Shippers and small communities often lack the expertise to sort out rail financial data or the money to hire experts to do it for them. State

rail officials can help in this area and should be contacted for assistance.

A railroad may ask the Board to waive certain informational requirements. For example, a railroad is normally allowed to exclude data concerning overhead or bridge traffic (shipments not actually originated or terminated on the line sought to be abandoned) if it would retain that traffic by rerouting it over other routes. However, an opponent who believes relevant information has been left out, should appeal the waiver explaining why the information is necessary. If the Board agrees, it will rescind the waiver and require the information.

4. Protests or Comments To The Proposed Abandonment

Once an application is filed, protestants have only 45 days to submit protests.¹ Protests should attempt to quantify the harm to shippers and the community and explain each protestant's interest in continued service. If possible, they should also try to critically evaluate the railroad's financial evidence. Section 1151.25(a) of the regulations lists all the information that should be in the protest.

All larger shippers and every community on the line should submit statements describing in detail their use of the line and the impact a loss of rail service will have on their operations and area. Opposition from elected officials from both the local and national level is also very helpful.

Shippers should submit car loading data and estimates of future use -- the best are showings of projected increased traffic. They should also point out any defects in the carrier's cost data. Communities and shippers should make every effort to quantify the harm from abandonment.

Protestants should describe their interest in the proceeding in as much detail as possible. For instance, if the line sought to be abandoned is used for grain shipments and the protestant is a grain producer, the statement should at least specify the number of years in farming, the farm's size, the amount of grain produced and shipped by rail, the number of people employed directly on the farm, the availability of alternative (whether rail, truck or barge) transportation, the cost of alternative transportation compared to the cost of using this line, and any other factors believed to be relevant. In addition, protestants should present any evidence they may have developed that contradicts the revenue and cost evidence the railroad has submitted. Always use specific numbers, facts and

¹**NOTE:** *Oral Hearing* requests must be filed within *10 days* of receipt of the application. The Board must act on those requests within *15 days* of the filing of the application. See time line in Appendix I.

figures when possible, and explain where the information comes from or how it was developed. Cost and revenue information is usually critical. Remember: If it is shown that the line is not a financial burden to the railroad, abandonment will be denied.

Again, protests and comments to the proposed abandonment must be received at the STB within 45 days after the filing of the application. An original and 10 copies of each comment or protest must be filed with the Board. A copy must be mailed to the applicant railroad, and each copy must contain a "Certificate of Service" (a statement that the railroad was mailed a copy of the comment or protest). No set "form" exists for a protest and many letter protests are received. However, the more detailed a protest is, the more weight it will receive.

5. Modified Procedure And Oral Hearings

The Board will either set the proceeding for an oral hearing or, more often, what is called "modified procedure". (In the years 1990 and 1991, 8 of the 27 abandonment applications filed resulted in an oral hearing. During its first year in existence the STB held no oral hearings.) Modified procedure means that no oral hearing is held, and all evidence is filed in writing. Oral hearings are for the primary purpose of cross examining witnesses who have filed verified statements in the proceeding. See 49 CFR 1152.25(a). With this in mind, requests for oral hearing should specify any factual matters which are likely to be disputed and require cross-examination.

Regardless of whether modified procedure or oral hearing is used, the core of both the railroad's and protestant's case will come in the form of written evidence.

After receiving the protests and the carrier's reply, the Board must issue its decision within 110 days after the application is filed.

6. Appeals

If a party is dissatisfied with a Director's decision, it may ask the STB to reconsider the matter. Director's decisions are made during certain stages of the proceeding. For example, the Director of the Office of Proceedings makes the determination whether or not an Offer of Financial Assistance is *bona fide*. See 49 CFR 1152.25(e) for other decisions made by the Director.

A party that is dissatisfied with a decision of the full Board may seek judicial review of the STB's decision by filing a petition for review in the appropriate United States Court of Appeals.

In situations where the abandonment application was protested a dissatisfied party may ask the STB to reopen the case if it can show material error, new evidence, or substantially changed circumstances. In an unopposed case, the only recourse for a dissatisfied party is if it can show that the carrier's abandonment application was defective (for failure to provide the required notices, for example) in which case it can ask the Board to vacate the abandonment certificate.

B. Issues In Abandonments

We will now discuss the important issues in rail abandonments and the factors the Board weighs in deciding these cases.

As explained earlier, the standard used in deciding abandonment cases is whether the railroad's burden of continued service outweighs the public's current and future need for the service.

The railroad first must establish that it is indeed suffering a loss or burden from the line. If it fails to prove this, the abandonment will be denied. However, the railroad does not have to demonstrate an "operating" loss. The Board also considers the annual "opportunity costs" of owning and operating the line. This is the cost of tying up the railroad's assets in track, land, and materials on the line, rather than putting those assets to other, more profitable uses. It is calculated by multiplying the carrier's investment in the line (including the net liquidation value of the track and land) by an appropriate annual rate of return. Where there is evidence of public need, the Board may refuse to grant abandonment based only on opportunity cost losses. If the railroad does show a loss or burden, then the protestants' evidence of public need is examined.

The statute specifically directs the STB to consider whether the abandonment "will have a serious, adverse impact on rural and community development." 49 U.S.C. 10903(d). Protestants can address this factor through evidence showing the economic impact abandonment would have on the area. This can be done by computing (1) markets that would be lost without rail service, (2) the number of business failures or relocations and lost jobs that would result from abandonment, and (3) the number of current or future ventures (such as industrial parks) that depend upon continued rail service. Likely sponsors of this type of testimony would be shippers (using data from their own business, industry, or farm), development experts from local or state governments, elected or appointed officials, and Chamber of Commerce representatives. In sparsely populated areas, for example, discontinuance of rail service may cause a significant loss of jobs and reduce the tax base upon which the community depends to support its local school system and other important public services.

A critical factor in assessing the impact of abandonment on a rail shipper's farm or business is the possible transportation alternatives available after abandonment. If shippers have already switched to truck transportation for part of their traffic, then truck transportation may be a suitable alternative for all their traffic. Yet, truck rates may be higher than rail rates, bringing into question whether the business can survive with higher transportation costs. Also, sufficient trucks may not be available in the area to handle the increased traffic, or the local road system may not be capable of handling the increased wear and tear of truck transportation. These issues need to be fully explored and developed by protestants. This is another area where State transportation specialists can provide shippers and local communities with invaluable assistance.

Local shippers also should be able to present testimony concerning past and future use of the rail line. Reasons for the low levels of past rail shipments, such as sporadic business fluctuations, drought or other local disaster, should be explained. If shippers are expecting increased rail shipments, based on sound and defensible business forecasts, this should be documented.

Besides the economic impact of the proposed abandonment, protestants may also point out any effect that the abandonment would have on the environment. For example, increased use of alternative modes of transportation, such as trucks, might adversely affect noise levels in congested areas or pose safety problems. The environmental consequences of abandonment are assessed by the STB's Section of Energy and Environment (SEE). For more information about environmental issues

you can contact SEE at (202) 565-1538. Also see the STB's regulations at 49 CFR 1105.

The balancing test the Board employs to decide abandonments has factors on both sides of the equation. To be successful, protestants should not only present the harm that they will suffer from abandonment, but they should also attempt to discredit the railroad's evidence of losses or burden from operating the line.

C. Evaluating Railroad Financial Data

Nobody opposing an abandonment can afford to ignore the railroad's financial data. The railroad must show it is incurring a loss or a burden. The railroad will attempt to show that (1) it is not receiving, and cannot reasonably expect in the future to earn, sufficient revenues from the line; and/or (2) it expects to face significant costs on the line in the future that it will not be able to recover. Normally, the past revenue generated by the line can be determined fairly accurately based on carrier and shipper records. Other data are subject to interpretation by the parties, however. These include: (1) projecting the revenues for the line; (2) isolating the historical expenses of operating and maintaining the line, and projecting future operating, maintenance and rehabilitation expenses; and (3) calculating the opportunity costs of operating the line.

Protestants who can critically evaluate this data will have a better chance of success. The assistance of a CPA or rail cost analyst is useful and can be critical. Even if there is insufficient time or money to analyze the financial data thoroughly, there are a number of key issues that should be examined.

Railroads are required to include in their abandonment applications projections of their revenues and costs on the line for a "forecast year" --the 12-month period beginning the first day of the month the application is filed. To project future revenues and costs, the railroad must necessarily make assumptions. Those assumptions should be evaluated critically. Nobody can predict the future with certainty, and in many instances the protestants may be in as good or better position than the railroad to make accurate predictions. For example, a substantial component of revenues usually consists of the number of shipments originating or terminating on the line. Shippers on the line presumably know their own businesses and future transportation needs and may be able to dispute the railroad's projections of future traffic. Wherever possible, protestants should provide specific facts and figures to support their own projections.

Of course, projections as to the future usually are based upon prior experience. Thus, the railroad's historical data should also be examined. Again, there are some issues that can be explored even if a rail cost analyst or other expert is not available.

First, confirm that all the data are from the relevant periods. Historical cost and revenue data must be submitted for a so-called "base year." The base year is the most recent 12 month period for which data have been collected at the branch level, ending no earlier than 6 months prior to the filing of the application.

Second, be alert to circumstances that may make the historical data unrepresentative. For example, was the carrier's ability to meet requests for service impaired by a shortage of rail cars? Or was there a recession or drought that resulted in lower, unrepresentative traffic volumes and revenues?

Third, confirm that actual costs and revenues are used where required by the regulations. Maintenance-of-way expenses usually cannot be estimated by prorating expenses from a larger section of track; actual expenses incurred on the line sought to be abandoned are normally required. Similarly, depreciation of equipment, the return on investment for locomotives, and fuel costs must be based upon the type of locomotive and freight cars actually used on the line. The use of summary data based upon "Road" and "Yard" categories is generally unacceptable, because it tends to overstate costs when, as is often the case, a local or way train serves the branch line.

Fourth, if there are high rehabilitation or deferred maintenance costs, a qualified individual should examine the railroad's work papers and physically inspect the properties. It may be possible to further defer maintenance-of-way expenses for yet another year, taking those costs out of the forecast year. Usually only those rehabilitation costs necessary to meet Federal Railroad Administration minimum class I standards are allowed. As a rule of thumb, rehabilitation costs and maintenance-of-way expenses vary inversely. That is, if rehabilitation costs are high, then maintenance-of-way costs should be low.

Fifth, as with the actual and projected revenue and cost information, the railroad's claimed opportunity costs should also be examined thoroughly by an analyst. Even if this is not possible, several key components of opportunity costs can be examined.

For example, land values are usually an important factor in calculating opportunity costs. Protestants should check with the Register of Deeds to make sure the land included in the railroad's

calculations is and would still be owned by the railroad in the event of an abandonment. In some cases, ownership of the land reverts automatically to adjoining landholders. In addition, local bankers and real estate agents can supply accurate information on land values that may contradict the railroad's estimate of the value of its land holdings. Protestants should also (1) verify the tons of track material that will result from salvaging the line; (2) obtain an estimate of the scrap value in dollars per ton, and (3) see whether the cost of dismantling the track was deducted from the railroad's estimated sales proceeds.

It should be noted that a carrier may either calculate its own (pre-tax) cost of capital or use the industry-wide (pre-tax) cost of capital figure that is determined annually by the STB. To obtain the Board's latest cost of capital determination call the STB's Section of Costing and Financial Information at (202)565-1533.

Finally, the railroad's projected gains or losses on its rail assets should be examined. Local real estate agents or brokers can check projections of changes in value for land, and the railroad's projections can also be compared to the index price series for historical sales of rail assets maintained by the Board. The railroad must justify departures from these trends.

III. EXCEPTIONS TO THE ABANDONMENT PROCESS UNDER 49 CFR 1152.50

The STB's power to exempt rail lines from the normal abandonment procedures is found in the ICC Termination Act, 49 U.S.C. 10502. Section 10502 gives the Board a broad grant of authority to exempt carriers, services and transactions from almost any and all kinds of STB regulation. The Board must exempt a carrier, service or transaction from regulation if it finds (1) that continued regulation is unnecessary to carry out the national rail transportation policy of 49 U.S.C. 10101, and (2) that either the transaction or service is of limited scope or application of the regulatory scheme is unnecessary to protect shippers from an abuse of market power. Congress clearly contemplated that the STB would use this general exemption power broadly. The legislative history reflects Congress' desire that the Board actively exempt railroads from unnecessary regulation, particularly regulations restricting changes in rates and services. But Congress also provided the Board with authority to revoke exemptions that it has issued if and when the Board finds that its regulation is indeed necessary.

The STB and the ICC before it have both used broad exemption authority to facilitate the abandonment of lines where it believes that closer regulatory scrutiny is unnecessary, through both class exemptions and individual line exemptions. As a class, the Board has exempted the abandonment of lines over which no local traffic has moved for at least 2 years without formal complaint about a lack of service. Where a line has generated traffic within the last 2 years, the railroad may seek to persuade the STB that an exemption is nevertheless appropriate for that individual line.

These exemptions are widely used.

A. Class Exemption: Out-of-Service Lines

To invoke the class exemption for out-of-service lines, a carrier must file a notice at the Board certifying that (1) no local traffic has moved on the line for the past 2 years; (2) any overhead traffic that has moved over the line can be rerouted over other lines; and (3) no formal complaint about a lack of service is pending or has been decided in favor of the shipper.

Unlike the traditional application process, no Notice of Intent to abandon or system diagram map or narrative notice is required. However, 10 days before filing the exemption notice with the Board, the railroad must notify the affected State's Public Service Board or equivalent agency of its intention to do so. The railroad must also send an advance environmental notice to the State, in accordance with STB regulation 49 CFR 1105.11.

The STB will publish the exemption notice in the Federal Register within 20 days after it is filed. Thirty (30) days after the Federal Register notice, the railroad may abandon the line, unless the Board stays the exemption.

Stay requests that raise transportation concerns must be filed within 10 days after the exemption notice is published in the Federal Register. Stay requests based on environmental or historic preservation concerns may be filed at any time but must be filed sufficiently in advance of the effective date for the Board to consider and act on the petition before the notice becomes effective. Offers to subsidize or purchase the line must be filed within 30 days after the Federal Register publication.

In addition, parties may ask the Board to reject the notice or reconsider the exemption as it applies to a particular line. Petitions to reject or reconsider may be filed within 20 days after the Federal Register notice. After the exemption takes effect, parties may ask the STB to revoke the exemption. Petitions to revoke may be filed at any time.

The STB will reject the notice if the information contained in the request is false or misleading. Therefore, if local traffic has moved on the line within the last 2 years, the exemption will be rejected.

Although environmental concerns, public need for continued service, and other issues can be raised in a petition to reconsider or revoke, the Board will disallow the exemption only in

extraordinary cases.

If use of the class exemption is disallowed for a line, the railroad is still free to apply for abandonment of the line under the regular application procedures discussed above (or seek an individual exemption under the procedures discussed below). The complete regulations applying to this class exemption are found at 49 CFR 1152.50. Also see the attached STB Timetable for class exemption proceedings at Appendix II..

B. Individual Exemptions under 49 CFR 1152.60

As with the out-of-service lines exemption, no Notice of Intent to abandon or system diagram map or narrative notice is required when a request for an individual exemption is filed. The only notice a railroad must give before filing an individual exemption request is an environmental notice to the designated State agency in each state where abandonment is proposed. To obtain the name and address of the designated agency in your State call the Board's Section of Energy and Environment at (202) 565-1538.

The Board must publish notice of the proposed exemption in the Federal Register 20 days after it is filed. No further public notice is given even if the petition is denied. Carriers frequently will serve a copy of their petition on any shippers on the line but are not required to give notice when the petition is granted or denied. Interested persons can be notified individually by the Board, if they ask that their names be placed on the Board's service list in a particular case. Parties of record (applicants and protestants) are placed on the service list automatically, but other interested persons should notify the Board's Office of the Secretary, 1925 K Street, N.W., Washington, D.C. 20423 of their desire to be served with copies of all decisions in a particular case.

A petition for an exemption generally will include only a brief description of the relevant facts. It need not be, and typically is not, accompanied by detailed financial or other information.

Persons opposing an exemption must file an opposition within 20 days after publication of the Federal Register notice. Offers to purchase or subsidize the line must be filed 120 days after the filing of the petition or exemption or 10 days after the service of the Board's decision granting the exemption, whichever occurs sooner. To receive a copy of that decision, you must have notified the Office of the Secretary of your interest in the case and have asked to be put on the service list as instructed, *supra*.

Petitions to stay the effective date of the decision may be filed in either “Petition” (Individual exemption) or “Notice” (class exemption cases). It should be noted that administrative agencies, like the Courts, have developed firm criteria for staying administrative action. To justify a stay, a petitioner must demonstrate that:

- (1) there is a **strong**, and the emphasis is on **strong**, likelihood that it will prevail on the merits;
- (2) it will suffer irreparable harm in the absence of a stay;
- (3) other interested parties will not be substantially harmed by the issuance of a stay; and
- (4) the public interest supports the granting of the stay.

The Board, as do the Courts, gives very careful consideration to each of the above criteria and has required a strong substantive showing on all of the four factors. While the showing of irreparable injury may vary from case to case, the key consideration is irreparable, and injuries that can be corrected later (however substantial in terms of money, time and energy) may not be enough to justify a stay. Similarly, in determining the public interest factor, the interests of private litigants must give way to the realization of public purposes. The burden of making a strong showing on all four of the above factors rests with the petitioner to convince the Courts or the Board that such extraordinary relief is warranted.

Where possible, parties opposed to the exemption should file an opposition or a protest with the Board before it acts on the exemption request. Even in the absence of a formal notice requirement, community leaders and shippers often are aware of a railroad's plan to seek an exemption before the carrier files its petition.

Protests and petitions for reconsideration of individual exemptions should include essentially the same kind of facts that would be included in a regular abandonment case. For instance, shippers should explain their business operations, quantify their use of the involved rail line, discuss the

availability and any additional cost of alternative transportation services, and explain the impact loss of the rail service would have on their businesses and the community. To the extent possible, protestants also should try to critically evaluate any financial information and traffic projections submitted by the railroad.

If the Board denies a carrier's request for an exemption, the carrier is free to file for authority to abandon under the regular application procedures discussed earlier.

IV. ALTERNATIVES TO ABANDONMENT

Users and interested parties should consider alternatives to abandonment at the first sign a carrier may be contemplating abandonment. The fact that the existing railroad believes the line is no longer economically viable does not necessarily mean the line cannot continue operations under other arrangements. There are many examples of small "short line" railroads operating on lines that the main line railroad sought to abandon. Congress and the STB have made it easier to preserve rail service by acquiring or subsidizing rail lines. These options will be briefly outlined below.

A. Forced Sales and Subsidies

To encourage continued service, Congress and the STB have adopted procedures that make it possible to force the sale or subsidy of lines slated for abandonment where the parties cannot agree on the price or terms of a subsidy.

1. Lines Approved For Abandonment

Under the offer of financial assistance (OFA) procedures, any financially responsible party seeking to continue service on a line approved for abandonment (or exempted) may compel the railroad to sell or conduct subsidized operations over the line. The statutory requirements and STB regulations concerning offers of financial assistance are contained at 49 U.S.C. 10904 and 49 CFR 1152.27, respectively.

Parties may request data on subsidy and acquisition costs from applicants in abandonment proceedings as soon as the Notice of Intent to abandon is filed. This includes (1) an estimate of the minimum purchase price or annual subsidy needed to keep the line in operation, (2) reports on the physical condition of the line, and (3) traffic and other data necessary to determine the amount of annual financial assistance needed to continue service. Any one who believes subsidy or acquisition is a possibility should request this information immediately and begin a thorough feasibility study.

Often the State will assist the railroad by providing substantial money for rehabilitation of the line.

In class exemption cases, where the railroad files a Notice of Exemption, Offers of Financial Assistance must be filed within 10 days of the publication of the Notice of Exemption in the Federal Register. In individual exemption cases where the carrier files a Petition for Exemption and in cases where the carrier files a full abandonment application and OFA must be filed within 10 days of the service date of the Board's order granting the exemption or abandonment application or within 120 days after the application or petition for exemption is filed, whichever is sooner. It is very important for a potential offeror to be aware of both the filing date and the date of the Board's decision. To do this, the potential offeror should ask to be placed on the Board's service list² for the relevant abandonment proceeding, so that the offeror will be advised as soon as any decision is in the case is served.

Each OFA is reviewed by the Board to determine whether the offeror is financially responsible and whether the offer itself is reasonable. A copy of the offeror's annual report or other financial statements should be submitted with the offer to show its financial responsibility. The STB assumes a State or local government entity to be financially responsible.

As to the reasonableness of the offer, a subsidy should cover the railroad's avoidable operating losses on the line, plus a reasonable return on the value of the line. An offer to purchase should equal the acquisition cost of the line (the net liquidation or going concern value of the line, whichever is higher). The offeror should explain how its offer was calculated and explain any disparity between its offer and the carrier's estimate.³ If the Board finds that the offeror is financially

²Write to the Office of the Secretary, Surface Transportation Board, 1925 K Street, N.W., Washington, D.C. 20423 and identify the docket number of the proceeding .

³Any carrier seeking abandonment authority from the Board must provide certain information to a party considering making an offer of financial assistance, including an estimate of the annual subsidy and minimum

responsible and the offer is reasonable, it will postpone the abandonment and give the parties an opportunity to negotiate.

If negotiations are successful and the parties voluntarily enter into a purchase (or subsidy) agreement which will result in continued rail service, the Board is required to approve the transaction and dismiss the abandonment application.

Should the parties fail to agree on the amount or terms of subsidy or purchase, either party may ask the STB (within 30 days after the offer is filed) to establish terms and conditions. The Board must issue a decision setting the terms and conditions, within 30 days after the request is made. The offeror then has 10 days to accept or reject the STB's terms and conditions. If the offeror chooses to accept them, then the railroad by law is forced to comply with them.

When a railroad receives more than one OFA, it can select the offeror with whom it wishes to transact business. Moreover, if the STB establishes terms and conditions at the request of an offeror who subsequently withdraws, then any other qualified offeror may take its place, forcing the railroad to go through with the subsidy or sale under those terms and conditions.

Certain conditions apply to sales under Section 10904(f)(4)(A). A purchaser may not transfer the line or discontinue service over the line for at least 2 years after consummation. After that time period, the purchaser may transfer the line back to the selling carrier, but it must wait at least 5 years before it can sell the line to others.

The financial assistance provisions of Section 10904 also apply where the Board exempts an abandonment from the formal application process. There are some differences however, particularly as to timing. For example, in exemption proceedings, persons interested in purchasing or

purchase price required to keep the line or a portion of the line in operation. See 49 U.S.C. 10904(b)(1) and OPS's information bulletin entitled "So You Want to Start a Small Railroad" which provides a more detailed discussion of the OFA process.

subsidizing the line must first submit to the STB and the railroad a written expression of their intent to make such an offer. This expression of intent must be received within 10 days after notice of the exemption is published in the Federal Register. Once the expression of intent is received, the exemption will be automatically stayed for 40 days. The offer itself is due 30 days after the Federal Register notice. For more information on these procedures see the STB's regulations at 49 CFR 1152.27.

2. Purchase of Lines Potentially Subject to Abandonment

The feeder railroad development program was designed as an alternative to abandonment. Congress envisioned it as a method of allowing shippers, communities, or other interested parties to acquire rail lines before an abandonment application is filed. If a rail line has been listed on a carrier's system diagram map as potentially subject to abandonment, a financially responsible person can compel the Board to require a railroad to sell it the line⁴. The price for such a sale is either agreed to by the parties or set by the Board. The statutory procedures for this program are found at 49 U.S.C. 10907 and the STB's regulations are detailed at 49 CFR 1151.

In short, a proceeding commences upon the filing of a feeder line application with the Board. The applicant must show, among other things, that it can (1) pay the net liquidation value of the line or its going concern value, whichever is higher, and (2) provide adequate service for at least 3 years. The Board has 15 days to reject the application if it does not contain the prescribed information or to accept it by filing a Notice in the Federal Register no later than 30 days after the application is filed. Within 30 days after the application is accepted, any other interested party may file a competing

⁴Even if a line is not shown on the carrier's system diagram map as a candidate for potential abandonment, shippers and communities may seek to compel the Board to require a railroad to sell the line by proving that the "public convenience and necessity" requires or permits the sale. This test, however, is more difficult to satisfy.

application to acquire all or any portion of the same line. The owning railroad and other interested parties may submit verified statements containing their evidence and arguments within 60 days after the initial application is accepted. Within 80 days after the initial application is accepted, offerors may file verified replies. The STB must publish its decision in the Federal Register. Within 10 days of the service date of the decision, the offeror must file a notice with the STB and the owning railroad either accepting or rejecting the Board's terms. If two or more offerors accept the STB's terms, the owning railroad has 15 days from the service date of the Board's decision to select the offeror with whom it wishes to transact business and to notify the STB and offerors. If the parties agree on a price then that price will be the final sale price.

In theory, this program has two major advantages. It allows the parties to save the time and expense involved in the abandonment process, and it allows the new owners to take over operation of a line before further downgrading occurs. The program however, has not lived up to its potential, in part because it places the railroad and new short line owner in an adversarial relationship from the outset. It forces the railroad to sell at a price it may not agree upon and requires the newly created shortline to then develop a relationship with the railroad (with whom it must interchange traffic to reach the main line) in order to function in its new venture.

B. Voluntary Sales and Operations

Parties interested in preserving rail service need not wait until abandonment is approved to negotiate a voluntary purchase of a line proposed for abandonment or for that matter any active rail line. To make purchases of lines that might otherwise be abandoned more attractive to potential buyers, the STB has exempted these purchases from regulation. Special provisions have also been adopted to encourage continued service on abandoned lines acquired by States.

1. Class Exemptions

The statutory standards for voluntary acquisitions are found in 49 U.S.C. 10901, 10902, and 11323. Section 10901 applies only when (1) a non-carrier acquires a rail line, and (2) an existing carrier acquires an inactive line (a line that is already lawfully abandoned). Acquisitions of active rail lines by existing carriers fall under Section 10902 or 11323. These formal application procedures are seldom used to preserve rail service on lines threatened with abandonment. Instead, voluntary purchases of lines subject to abandonment are almost always consummated under exemptions to the formal acquisition procedures. These exemptions are discussed below.

a. Section 10901 Acquisitions

Following the Staggers Act and deregulation of the railroads, large Class 1 carriers began to sell or abandon unprofitable or marginally profitable lines. Requests to acquire and continue service over these lines were usually unopposed and were almost always approved because they were in the public interest. This led the ICC to promulgate broad class exemption procedures in 1986.⁵ The current rules are found in 49 CFR 1150 Subpart D. Most non-carrier acquisitions and operations are now exempt from formal regulation under Section 10901, as are all carrier acquisitions of abandoned lines. When a Class II or Class III carrier acquires a line, it is governed by 49 U.S.C. 10902.

To invoke the class exemption, the acquiring party must file a verified notice including general information about the transaction, and a caption summary which will be used to provide public notice of the transaction. The exemption procedures differ depending on the carrier's size (in terms of gross revenue). If the transaction will create a Class III (smallest size) railroad, the

⁵ The STB has modified these rules by decision served November 18, 1996 at Ex parte 529, Class Exemption for Acquisition or Operation of Rail Lines by Class III Rail Carriers under 49 U.S.C. 10902.

exemption will be effective 7 days after the notice is filed.

b. Section 11323 Transactions

Class exemptions have also been established for seven kinds of transactions that would otherwise require approval under 49 U.S.C. 11323 -- the statute applicable to carrier acquisitions of active rail lines. The most important for our discussion here are (1) acquisition of a line which has already been approved for abandonment and would not constitute a major market extension, (2) acquisition of nonconnecting lines, and (3) acquisition of trackage rights. (The last two categories do have some qualifications not relevant here.) See 49 CFR 1180.2(d).

To invoke these exemptions, the carrier must file a verified notice, at least one week before the transaction is to be consummated, containing the information listed in the Board's regulations at 49 CFR 1180.4(g)(1). To qualify for an exemption for acquisition or renewal of trackage rights agreements, a caption summary must be filed as well. See 49 CFR 1180.4(g)(2)(i).

2. Individual Exemptions

Where no class exemption applies, an individual exemption may be sought for almost any small rail acquisition or operation, under the Board's general exemption authority at 49 U.S.C. 10502. Such requests for individual exemptions should be tailored to the particular situation involved.

The statute itself exempts some types of rail operations and transactions from STB regulation. The acquisition or use of spur, industrial, team, switching or side tracks is exempt under 49 U.S.C. 10906. These statutory exemptions are defined narrowly and the facts of each situation must be carefully examined to determine if the exemption applies.

V. LABOR ISSUES

No discussion of the acquisition and abandonment of rail lines would be complete without recognizing the increased importance rail labor plays in many of these cases. Labor witnesses often take an active role in opposing abandonment applications and other proceedings. In addition, the ICC Termination Act provides certain protection for employees of railroads engaging in some major changes in operations. It requires railroads to protect their employees from financial loss for a period of up to 6 years and to provide other protection relating to benefits and seniority.

Labor issues may arise in any rail transaction. The STB imposes labor protective conditions (LPC's) in most abandonments.

The conditions have been crafted differently for each situation. Generally there are the Oregon Short Line conditions imposed in abandonment cases, the Mendocino Coast conditions imposed in lease transactions, and the New York Dock conditions imposed in line sales to existing carriers⁶. When imposed, these conditions obligate the selling or abandoning railroad and, in some cases, can also be imposed on the acquiring railroad. When the acquiring entity is an established railroad or is a wholly owned subsidiary that is not independent from its rail parent, conditions may be imposed on both the acquiring and selling carriers. But where there is an acquisition of a line by a non-carrier or a Class III carrier, the employees are not entitled to any labor protection. Moreover, LPC's are not imposed for forced sales under the offer of financial assistance provisions of Section

⁶These conditions are set forth in Oregon Short Line R. Co.-- Abandonment -- Goshen, 360 ICC 91 (1979); Mendocino Coast Ry., Inc. -- Lease and Operate, 354 ICC 732 (1978) and 360 ICC 653 (1980), as clarified in Wilmington Terminal RR, Inc. -- Pur. and Lease -- CSX Transp., Inc., 6 ICC 2d 799 (1990), aff'd sub nom, Railway Labor Executives' Ass'n v. ICC, 930 F2d 511 (6th Cir. 1991) (Wilmington Terminal); and New York Dock Ry. -- Control -- Brooklyn Eastern Dist., 360 ICC 60 (1979), as clarified in Wilmington Terminal, supra. They are all variations of the original LPC agreement hammered out between labor and management in 1936, the Washington Job Protection Agreement.

10904 and are imposed only on the seller when there is a forced sale under the Feeder Railroad Development Program.⁷

The Board is not allowed to use its exemption powers under 49 U.S.C. 10502 to excuse carriers from providing employees with the LPC's they are due.

It is important at the beginning of any abandonment or acquisition proceeding to determine what position, if any, rail labor intends to take. There are some abandonments which will have minimal or no effect on rail jobs. In those cases, rail labor often decides not to participate. There are other situations in which labor witnesses play an active role, challenging railroad costing testimony and providing conflicting data in such areas as labor costs, track maintenance, and the current condition of the track and rolling stock.

⁷Feeder line purchasers are required to use the existing employees on the line to the extent possible. See 49 U.S.C. 10910 (e) and (j).

VI. ALTERNATIVE USES FOR RAIL RIGHTS-OF-WAY

The ICC Termination Act and the National Rails to Trails Act, along with the STB's regulations give interested parties the opportunity to negotiate *voluntary* agreements to use a railroad right-of-way that otherwise would be abandoned for recreational or other public use, such as a commuter rail service or a highway. These methods of preserving a railroad corridor are known as "rail banking" meaning that the right-of-way is preserved for potential future use as a railroad. Many railroads do not own the land on which their tracks lie. Rather, they have easements over the land of adjoining property owners. Unless those easements are "rail-banked" by converting them to a trail or other public use, they are extinguished.⁸ Some rights-of-way which were "banked" have been reactivated. The rules for filing a request for a public use condition are slightly different from those which apply to the filing of a trails use request. The sample request which appears in this bulletin as Appendix III is a request for both types of conditions. Proponents often ask for both conditions in the same request in order to take advantage of the benefits of each type of condition. This disadvantage of this approach is that the request for a trails use condition has a filing fee, while a request for public use condition does not. Since filing fees for all types of cases change at least once a year, it is advisable to contact the Board's Office of Public Services at (202) 565-1592 to determine the current fee, if any, before filing any pleading.

⁸ Because real estate law and practice differs from state to state, we refer to landowners along the rail line as "adjoining" property owners. Sometimes adjoining property owners may have what is commonly called a "reversionary" interest in the land, meaning that upon the termination of the easement, the land is then available for the full, unencumbered use of the landowner or fee holder. In some states, when a rail use terminates, the land on which the rail line sits passes, as a matter of state law, to the adjoining landowners even when those landowners had no title to the land prior to its use as rail property. In some cases, railroads do own the land on which the track sits in fee simple and can dispose of it as they wish.

A. Public Use Conditions

Under the terms of the ICC Termination Act at 49 U.S.C. 10905, when the Board approves or exempts an abandonment it must determine whether the rail line is suitable for alternative public use, such as highways, other forms of mass transit, conservation, energy production or transmission, or recreation. If it is, the Board may prohibit the railroad from selling or otherwise disposing of the rail corridor for up to 180 days after the effective date of the decision or notice authorizing abandonment. During the 180 day period, interested persons may negotiate with the railroad to acquire the property for public use. The railroad's consent is unnecessary for the imposition of this negotiating period. If the parties fail to reach an agreement within the 180 day period⁹, the Board must allow the railroad to fully abandon the line and dispose of its property. It cannot *require* the railroad to sell its property for public use.

The Board will only impose a public use condition when it has received a request to do so pursuant to 49 CFR 1152.28. The request must:

1. state the condition sought;
2. explain the public importance of the condition;
3. state the period of time for the condition (which cannot exceed 180 days); and
4. provide justification for the requested period of time.
5. A "Certificate of Service" indicating that a copy of the public use request has been served on the carrier seeking abandonment at its address of record.

A sample request for Public Use Condition is provided in Appendix III. An original and 10 copies must be submitted to the Board.

Timing is important. In an application for abandonment, the public use proponent must file the request within 45 days of the filing of the application, i.e. 25 days after the notice of the application appears in the Federal Register. In exemption cases, whether the exemption is a class exemption (notice) or an individually sought exemption (petition), the public use condition request must be filed within 20 days after the Federal Register publication appears.

⁹Unlike trails use conditions, public use conditions cannot be extended beyond the statutorily imposed 180 day limit, even if the parties' consent.

B. Request for Trail Use Conditions

To begin the trail use process, a trail proponent must file a trail use request in the proceeding initiated by the railroad to abandon the line. A trail use request has no effect on the Board's decision whether to give a railroad permission to abandon. It is considered only after the Board has decided to permit the abandonment.

Under 49 CFR 1152.29, the trail use request must include:

1. A map which clearly identifies the rail corridor (including mileposts) which is proposed for trail use,
2. A statement of willingness to accept financial responsibility which indicates the proponent's willingness to manage the trail, pay property taxes on the trail and accept responsibility for any liability arising from the use of the rail corridor as a trail, and.
3. An acknowledgment that trail use is subject to the user's continuing to meet the above obligations, and the possibility of future reactivation of rail service on the corridor.
4. A "Certificate of Service" indicating that a copy of the trails use request has been served on the carrier seeking abandonment at its address of record.

A sample public use condition/trails use request appears at Appendix III. An original and 10 copies of the request must be filed with the Board and a copy served on the railroad.

Unlike the public use condition, the trail use condition will only be imposed if the railroad consents. If the railroad does agree, then a condition is imposed which prohibits the rail carrier from otherwise disposing of the rail corridor for 180 days while the parties negotiate an agreement. The Board has granted an extension of that 180 day period in cases where the parties jointly request it indicating that they are close to agreement.

As with the public use condition request, timing is very important. In an abandonment application, trail use requests must be filed within 45 days of the filing of the application i.e., 25 days after the publication of the application in the Federal Register. The rail carrier seeking abandonment authority then has 15 days to notify the Board whether and with whom (if more than one proponent has submitted a request) it intends to negotiate a trail use agreement. In class

exemption cases, a trails use request must be filed within *10* days of the appearance of the notice in the Federal Register. Note that this is 10 days earlier than a public use condition request is due. In an individual exemption case (petition), a trails use request must be filed with 20 days of the appearance of the Federal Register notice. In both types of exemption cases the carrier has 10 after the trails use request is received to notify the Board whether and with whom it intends to negotiate a trails use agreement.

Appendix I

SYNOPSIS OF NEW ABANDONMENT REGULATIONS

1. Effective Date: Regulations effective on 1/23/97

2. New Uniform Schedule:

Day -60 Deadline for identifying line as category 1 on SDM.

Day -30
 To Opportunity to file Notice of Intent.
Day -15

Day -20 Due date for railroad to file environmental and/or historic reports on required agencies

Day 0 Application filed, including applicant's case in chief.

Day +10 Due date for oral hearing requests.

Day +15 Due date for Board decision on oral hearing requests.

Day +20 Due date for Notice of Application to be published in the Federal Register.

Day +45 Due date for protests and comments, including opposition case in chief, and for public use and trail use requests.

Day +60 Due date for applicant's reply to opposition case and for applicant's response to trail use requests.

Day +110 Due date for service of decision on the merits.

Day +120 Due date for offers of financial assistance, except that if an application has been granted by decision issued sooner than Day 110, the offer of financial assistance shall be due 10 days after service of the decision granting the application.

3. Important Changes from the Old Regulations:

 a. The Board will publish a notice of an abandonment application or a petition for an individual exemption in the Federal Register 20 days after the application or petition is filed.

 The notice will: 1) Describe the proposal; and 2) Advise the public regarding due dates for OFAs and requests for public use and trail use conditions, and explain how to participate in the proceeding.

 The railroad must file a draft notice on a disk.

Appendix II

STB TIMETABLE FOR CLASS EXEMPTION PROCEEDINGS

Abandonments and Discontinuances of Service and Trackage Rights

F-10 days	Notice of exemption procedure filed with State and other agencies.
F	Notice of exemption filed with STB. (Filing Date + F)
P (F+20 days or fewer)	Notice of exemption proceeding published in <u>Federal Register</u> .
P+10 days	Petition to stay effective date of exemption due. Request for Trails Use Condition Due
P+20 days	Petitions for reconsideration due. Comments due. Requests for Public Use Condition Due.
P+30 days	Exemption effective/abandonment or discontinuance may occur (unless stayed for reconsideration).

SOURCE: 49 CFR, Section 1152.50

APPENDIX III

1. Sample Public Use Condition and Trail Use Request

Below is a sample of a request for both a Public Use Condition and a Trail Use Condition. The blank spaces and items in italics are to be completed by the prospective trail agency or group to reflect the specific circumstances. Remember that the requests should be mailed to both the STB and the railroad simultaneously.

[Date]

Secretary

Surface Transportation Board

Washington, DC 20423-0001

Re: *[Name of Railroad Company]* Abandonment in *[Name of County and State]*, *[STB Docket Number]*

Dear Secretary:

This request is filed on behalf of *[Agency Name]*, which is a *[political subdivision or government agency interested in transportation and/or natural resources, private/public interest organization interested in conservation and/or recreation, etc.]*, hereinafter referred to as "proponent."

Proponent requests issuance of a Public Use Condition as well as an Interim Trail Use Condition rather than an outright abandonment authorization between *[endpoint a]* and *[endpoint b]*.

A. Request For Public Use Condition

Proponent asks the STB to find that this property is suitable for other public use, specifically trail use, and to place the following conditions on the abandonment:

1. An order prohibiting the carrier from disposing of the corridor, other than the tracks, ties and signal equipment, except for public use on reasonable terms. Justification for this condition is: *[example: the rail corridor in question is along a scenic river and will connect a public park to a major residential area. The corridor would make an excellent recreational trail and conversion of the property to trail use is in accordance with local plans. In addition, the corridor provides important wildlife habitat and open space and its preservation as a recreational trail is consistent with those purposes]*. The time period sought is 180 days from the effective date of the abandonment authorization. Proponent needs this much time: *[example: to assemble or to review*

title information, complete a trail plan, or begin negotiations with the carrier].

2. An order barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts and tunnels. The justification for this condition is that these structures have considerable value for recreational trail purposes. The time period requested is 180 days from the effective date of the abandonment authorization for the same reason as indicated above.

B. Request For Interim Trail Use

The railroad right-of-way in this proceeding is suitable for railbanking. In addition to the public use conditions sought above, proponent also makes the following request:

STATEMENT OF WILLINGNESS TO ASSUME

FINANCIAL RESPONSIBILITY

In order to establish interim trail use and railbanking under section 8(d) of the National Trails System Act, 16 U.S.C.

§1247(d), and 49 CFR §1152.29, is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability], and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by and operated by .

The property, known as the , extends from railroad milepost near to railroad milepost near , a distance of miles in County, . The right-of-way is part of a line of railroad proposed for abandonment in STB Docket No. AB- (Sub-No.).

A map depicting the right-of-way is attached.

acknowledges that use of the right-of-way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and reactivation of the right-of-way for rail service.

By my signature below, I certify service upon [*Railroad Company and address*], by U.S. Mail, postage pre-paid, first class, this day of , 20 .

Respectfully submitted,

Name

on behalf of: