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August 6, 2020

By e-filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

ENTERED
Office of Proceedings
August 6, 2020
Part of
Public Record

Re: Docket No. NOR 42170, *Kingsbury Elevator, Inc. v. Grand Trunk Western Railroad Company*

Ex Parte Docket No. 346 (Sub-No. 24), *Rail General Exemption Authority -- Miscellaneous Manufactured Commodities*

Dear Ms. Brown:

Hereby forwarded for filing are a Complaint in Docket No. NOR 42170 and a Petition for Partial Revocation of Class Exemption in related Ex Parte Docket No. 346 (Sub-No. 24).

The filing fee of \$350 each (total of \$700) is being paid through pay.gov.

A copy of the Complaint and Petition are being served on the Chief Legal Officer of Canadian National Railway Company by overnight mail.

FILED
August 6, 2020
SURFACE
TRANSPORTATION BOARD

TMcf:mg:1884\efSTB1

cc: Sean Finn, Esq.
Messrs. Edgar Lindborg
Paul Lindborg

Respectfully submitted,

/s/Thomas F. McFarland

Thomas F. McFarland
Attorney for Kingsbury Elevator, Inc.

FEE RECEIVED
August 6, 2020
SURFACE
TRANSPORTATION BOARD

Petitioner

Attorney for Petitioner

DATE FILED: August 6, 2020

* This Petition is related to a simultaneously-filed Complaint in Docket No. NOR 42170, *Kingsbury Elevator, Inc. v. Grand Trunk Western Railroad Company*.

BEFORE THE
SURFACE TRANSPORTATION BOARD

RAIL GENERAL EXEMPTION	)	
AUTHORITY -- MISCELLANEOUS	)	EX PARTE NO. 346 (SUB-NO. 24)
MANUFACTURED COMMODITIES	)	

PETITION FOR PARTIAL REVOCATION OF CLASS EXEMPTION

Pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. § 1121.4(f), KINGSBURY ELEVATOR, INC. (KE) hereby respectfully petitions for partial revocation of the class exemption for miscellaneous manufactured commodities to the extent necessary for the Board to entertain a Complaint in Docket No. NOR 42170, *Kingsbury Elevator, Inc. v. Grand Trunk Western Railroad Company*, being filed concurrently with this Petition.

The Complaint alleges violations of provisions of the Interstate Commerce Act arising out of rail transportation of canola meal, corn gluten meal, and gluten feed pellets by Grand Trunk Western Railroad Company (GTW), a subsidiary of Canadian National Railway Company (CN).

The class exemption at issue was adopted in Ex Parte No. 346 [Sub-No. 24], *Rail General Exemption Authority -- Miscellaneous Manufactured Commodities*, 6 ICC 2d 186 (1989).

GTW participates in transportation of canola meal, corn gluten meal, gluten feed pellets, and fertilizer from origins primarily in western Canada and the western United States to KE's place of business at Kingsbury, Indiana. Rail transportation of those commodities is included in the class exemption for miscellaneous manufactured commodities referred to above. It would be

necessary for the Board to partially revoke that class exemption in order to entertain KE's Complaint against GTW. No relief is required as to fertilizer which is not included in any class exemption.

Pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. § 1121.4(f), the Board may revoke an exemption in whole or in part if it finds that regulation of particular transportation is necessary to carry out the national rail policy set out at 49 U.S.C. § 10101.

In adopting the class exemption under consideration, the Board's predecessor, the Interstate Commerce Commission (ICC), contemplated that partial revocation would sometimes be necessary upon a closer analysis of the circumstances associated with particular transportation, viz:

...should there be isolated instances in which regulation remains appropriate, parties may apply to us for partial revocation of the exemption as it relates to those movements... (6 ICC 2d at 195).

x x x

...If...a rail carrier...does subject shippers to an abuse of market power, then...a partial revocation of this exemption...would be in order (6 ICC 2d at 196).

The Board should partially revoke the class exemption for rail transportation of canola meal, corn gluten meal, and gluten feed pellets in order to entertain KE's Complaint against GTW. The statutory requirements for such revocation in 49 U.S.C. § 10502(d) are met.

Thus, regulation of the violations of law alleged in KE's Complaint is necessary to carry out the following national rail policies:

- (1) 49 U.S.C. § 10101(4) - "to ensure the development and continuation of a sound rail transportation system";
- (2) 49 U.S.C. § 10101(9) - "to encourage honest and efficient management of railroads";

- (3) 49 U.S.C. § 10101(2) - “to require fair and expeditious decisions when regulation is required”; and
- (4) 49 U.S.C. § 10101(12) - “to prohibit predatory. . .practices”.

WHEREFORE, the Board should partially revoke the class exemption for miscellaneous manufactured commodities, i.e. canola meal, corn gluten meal, and gluten feed pellets to the extent necessary for the Board to entertain KE’s Complaint against GTW in Docket No. NOR-42170, filed concurrently.

Respectfully submitted,

KINGSBURY ELEVATOR, INC.
P.O. Box 66
Kingsbury, IN 46345

Petitioner

/s/ Thomas F. McFarland

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Attorney for Petitioner

DATE FILED: August 6, 2020

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2020, I served a copy of this Petition For Partial Revocation of Class Exemption by UPS overnight mail for delivery on August 7, 2020, on, Sean Finn, Esq., Chief Legal Officer, Canadian National Railway Company, 935 de La Gauchetière Street West Montreal, Quebec H3B 2M9.

/s/ Thomas F. McFarland

Thomas F. McFarland