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August 30, 2021

VIA E-FILING

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

ENTERED
Office of Proceedings
August 30, 2021
Part of
Public Record

Re: Utah Railway Company
– Discontinuance Exemption –
in Carbon and Emery Counties, Utah
Docket No. AB 310 (Sub. No. 3X)

Dear Ms. Brown:

Enclosed for e-filing on behalf of the Utah Railway Company is a Petition for Exemption being filed in accordance with 49 CFR Part 1152 Subpart F.

The filing fee was paid using Pay.gov. Please let me know if there are any questions regarding this filing.

Sincerely,

Justin J. Marks
Counsel for Utah Railway Company

Enclosure

FILED
August 30, 2021
SURFACE TRANSPORTATION BOARD

FEE RECEIVED
August 30, 2021
SURFACE TRANSPORTATION BOARD

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-310 (Sub No. 3X)

UTAH RAILWAY COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN CARBON AND EMERY COUNTIES, UT

PETITION FOR EXEMPTION

(color images included)

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Counsel for Utah Railway Company

Dated: August 30, 2021

Before the
SURFACE TRANSPORTATION BOARD

STB Docket No. AB-310 (Sub No. 3X)

**UTAH RAILWAY COMPANY
- DISCONTINUANCE OF SERVICE EXEMPTION -
IN CARBON AND EMERY COUNTIES, UT**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. §10502 and 49 C.F.R. parts 1121 and 1152, Utah Railway Company (“UTAH”), a Class III railroad common carrier, files this petition seeking an exemption from the provisions of 49 U.S.C. §10903 to discontinue service over the rail line between approximately milepost 0.25 near Helper, UT in Carbon County and approximately milepost 25.3 near Mohrland, UT in Emery County, a distance of approximately 25.05 miles (the “Subject Line”). A map of the Subject Line is attached hereto as Exhibit A. In support of its request for exemption, UTAH represents as follows:

I. BACKGROUND

The Subject Line is approximately 25.05 miles long in Carbon and Emery Counties, Utah. It traverses through United States Postal Service ZIP Codes 84526, 84501, 84527, and 84528. Because this proceeding would involve the discontinuance of common carrier service and not abandonment of the Subject Line, UTAH understands that the question of whether the Subject Line contains federally granted rights-of-way is inapplicable. Any documentation related to title in UTAH’s possession will be made promptly available to those requesting it. The Subject Line is stub ended and therefore there is no overhead service. There are two freight stations on the Subject Line - Martin at milepost 0.8 and Wildcat at milepost 6.2.

The U.S. Smelting, Refining and Mining Company began UTAH's freight operations with the transportation of minerals and ores around 1912 to serve mining operations under the name Utah Coal Railway, later renamed the Utah Railway Company. The Subject Line served mines near Mohrland and Hiawatha, Utah. U.S. Smelting, Refining and Mining Company, under the new name UV Industries, Inc. sold UTAH to Sharon Steel Company in 1979. Sharon Steel Company reorganized as Mueller Industries, Inc. and in 2002, Genesee & Wyoming Inc. acquired UTAH from Arava Natural Resources Company, Inc., a wholly owned subsidiary of Mueller Industries, Inc.¹

UTAH is discontinuing service over the Subject Line and leasing a portion of it from milepost 0.2 to milepost 9.0 to its sole customer on the line – Wildcat Midstream Partners, LLC (“Wildcat Midstream”) – for use as a private industrial side track. UTAH will continue to move rail cars for Wildcat Midstream over the leased track, and to provide common carrier switching service to the interstate rail network over the connecting track between milepost 0.2 and milepost 0.0 which will remain as a line of railroad. A letter in support of this petition from Wildcat Midstream is attached as Exhibit E. The portion of the Subject Line beyond milepost 9.0 has not had any local or overhead service since August 2008 when a fire destroyed the Gordon Creek Bridge.

II. ARGUMENT SUPPORTING THE DISCONTINUANCE OF SERVICE

The Board has jurisdiction over the proposed discontinuance pursuant to 49 U.S.C. §10903. Under 49 U.S.C. §10502, 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.

¹ *Genesee & Wyoming Inc., - Control Exemption – Utah Railway Company and Salt Lake City Southern Railroad Company*, STB Finance Docket No. 34235 (served Sept. 16, 2002).

§10101; and (2) either (a) the transaction is of limited scope, or (b) regulation is not necessary to protect customers from the abuse of market power.

The legislative history of Section 10502 shows that Congress intended for the Board to use its exemption authority to free certain transactions from the administrative and financial costs associated with continued regulation. When enacting the Staggers Rail Act of 1980, Pub. L. No. 96-488, 94 Stat. 1895, Congress encouraged the Board's predecessor agency to use its exemption authority liberally:

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 the 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 as Section 10502. H.R. Rep. No. 422, 104th Cong. 1st Sess. 168-69 (1995).

Unless the requested exemption is granted, UTAH's discontinuance of service would be subject to 49 U.S.C. §10903 and the Board's regulations implementing that section at 49 C.F.R. Part 1152. This transaction should be exempted from regulatory requirements because it satisfies the standards of Section 10502: (1) regulation is not necessary to carry out the federal rail transportation policy ("RTP") of 49 U.S.C. §10101; (2) the transaction is of limited scope, and (3) the transaction will not result in an abuse of market power.

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

Detailed scrutiny of UTAH's proposed discontinuance under 49 U.S.C. §10903 is not necessary to carry out the RTP. The Subject Line is stub-ended and only serves a single freight customer, Wildcat Midstream. UTAH and Wildcat Midstream have entered into a lease of a portion of the Subject Line to facilitate Wildcat Midstream's use of the Subject Line as a private industrial side track. UTAH will continue to move cars for Wildcat Midstream over the leased portion of the Subject Line. The remainder of the Subject Line beyond the portion subject to the lease has not been used since 2008 when a fire destroyed the Gordon Creek Bridge.

This transaction will not cause any interruption in service over the Subject Line because UTAH will continue to provide the common carrier rail service over to Wildcat Midstream over the connecting line of railroad, and to move cars over the leased private track for Wildcat Midstream. An exemption from the application process would promote a fair and expeditious regulatory decision-making process, reduce regulatory barriers to exit, and result in the efficient handling of this proceeding. 49 U.S.C. §§10101(2) and (7), (15). Additionally, granting an exemption for UTAH's proposed discontinuance will foster sound economic conditions and encourage efficient management of railroads. 49 U.S.C. §§10101 (5), and (9). Other aspects of the rail transportation policy will not be adversely affected.

B. This Transaction is Limited in Scope

This transaction is of limited scope because the Subject Line is stub-ended and only serves a single freight customer. U.S.C. § 10502(a)(2)(A). The shipper will not lose rail service or experience an interruption of rail service as a result of this transaction because the parties are entering into the lease to facilitate Wildcat Midstream's use of a portion of the Subject Line as a

private industrial side track, and UTAH will continue providing the connecting common carrier service.

C. This Transaction Will Not Result in an Abuse of Market Power

UTAH's proposed discontinuance is of limited scope and therefore, it is not necessary for UTAH to demonstrate that regulation is not needed to protect shippers from the abuse of market power. However, regulation is not needed to protect shippers from the abuse of market power because UTAH will provide an uninterrupted continuation of rail service. Further, the only customer on the Subject Line – Wildcat Midstream – supports this petition (*see* Exhibit E) and the purpose of this petition is to facilitate Wildcat Midstream's use of a portion of the Subject Line as a private industrial side track. *See Kasgro Rail Corp. – Discontinuance of Service Exemption – In Lawrence County, PA*, No. AB-1264X, slip op. at 2 (STB served July 31, 2018); *Gateway Western R. Co. – Discontinuance of Service Exemption – In Jackson County, MO*, No. AB-566X, slip op. at 2 (STB served July 21, 2000).

III. ADDITIONAL INFORMATION

UTAH's proposed discontinuance is not eligible for the Board's class exemption for out of service rail lines because it has been providing common carrier service on the Subject Line. Although not required under the Board's regulations for discontinuance petitions for exemption, UTAH hereby provides the following additional information that would be required under 49 C.F.R. § 1152.50(d)(2) and 1152.22 if the discontinuance were sought pursuant to the Board's class exemption:

1. The exact name of Applicant is Utah Railway Company.
2. Applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter

105.²

3. UTAH seeks to discontinue service on the Subject Line extending between approximately milepost 0.25 near Helper, UT in Carbon County and approximately milepost 25.3 near Mohrland, UT in Emery County, a distance of approximately 25.05 miles.

4. A map of the Subject Line is attached hereto as Exhibit A.

5. The representative of UTAH to whom correspondence should be sent is:

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave., NW
Suite 1300 South
Washington, DC 20004
jmarks@clarkhill.com
Tel: (202) 772-0916

6. The Subject Line to be discontinued traverses through United States ZIP Codes 84526, 84501, 84527, and 84528.

7. The petition for exemption presented herein pertains to UTAH's proposal to discontinue common carrier freight operations over the Subject Line and not abandonment authority. Accordingly, trail use / rail banking and other public use conditions are not appropriate.³

8. UTAH proposes to consummate the discontinuance on or after the effective date of the discontinuance to be established by the Board in this proceeding.

² *Genesee & Wyoming Inc., - Control Exemption – Utah Railway Company and Salt Lake City Southern Railroad Company, STB Finance Docket No. 34235 (served Sept. 16, 2002).*

³ *See Norfolk Southern Railway Company – Discontinuance of Service Exemption – In St. Joseph and LaPorte Counties, IN, STB Docket No. AB-290 (Sub-No. 307X) (served June 18, 2008); Everett Railroad Company – Discontinuance of Service Exemption – In Blair County, PA, STB Docket No. AB-721X (served November 16, 2007); Columbus and Greenville Railway Company – Discontinuance of Service Exemption – In Greenwood, MS, STB Docket No. AB-297 (Sub-No. 103X) (served July 2, 2007).*

No formal complaint by a user of rail service on the Subject Line, or a state or local government entity acting on behalf of such user, regarding UTAH's cessation of service over the Subject Line, either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the last two years.

IV. ENVIRONMENTAL AND HISTORICAL REPORTING REQUIREMENTS

An environmental and historic report is not required for a discontinuance proceeding.⁴ Further, because UTAH seeks only discontinuance and not abandonment authority UTAH will not be disposing of or altering the Subject Line or any structures that are 50 years old or older.

V. NOTICE

Pursuant to the provisions of 49 C.F.R. §1152.60(c), UTAH has attached as Exhibit B, a draft Federal Register notice of its Petition to be published by the Board within 20 days of the Petition's filing with the Board.

The newspaper notice required by 49 C.F.R. §1105.12 was published on August 11, 2021 in *ETV News*. A copy of the proof of publication is attached as Exhibit C.

A copy of the notice dated August 4, 2021, that was sent to the required governmental agencies under 49 C.F.R. §1152.50(d)(1) is attached hereto as Exhibit D, and a copy of this Petition is being served on those agencies as required by 49 C.F.R. §1152.60(d).

VI. LABOR PROTECTION

Although no employees of UTAH will be affected by the proposed discontinuance, UTAH recognizes that its discontinuance of the Subject Line will be made subject to the standard employee protective conditions as set forth in *Oregon Short Line Railroad Co. - Abandonment -- Goshen*, 360 I.C.C. 91 (1979).

⁴ See *supra* note 4 and 49 C.F.R. §1105.6(c) and §1105.8(b).

VII. CONCLUSION

UTAH respectfully requests that the Board, under 49 U.S.C. §10502, exempt its discontinuance of service over the Subject Line from regulation under 49 U.S.C. §10903 because UTAH will continue to serve the sole customer on the Subject Line and UTAH is submitting this petition to facilitate the customer's use of a portion of the Subject Line as a private industrial side track.

Respectfully submitted,



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Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.
Suite 1300 South
Washington, DC 20004
(202) 772-0916
jmarks@clarkhill.com

Counsel for Utah Railway Company

Dated: August 30, 2021

VERIFICATION

I hereby verify on behalf of Utah Railway Company, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on August 30, 2021.

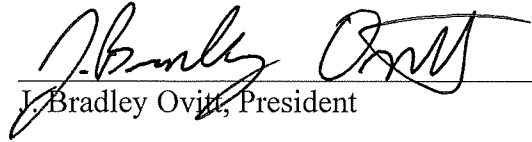

J. Bradley Ovitt, President

EXHIBIT A

MAP



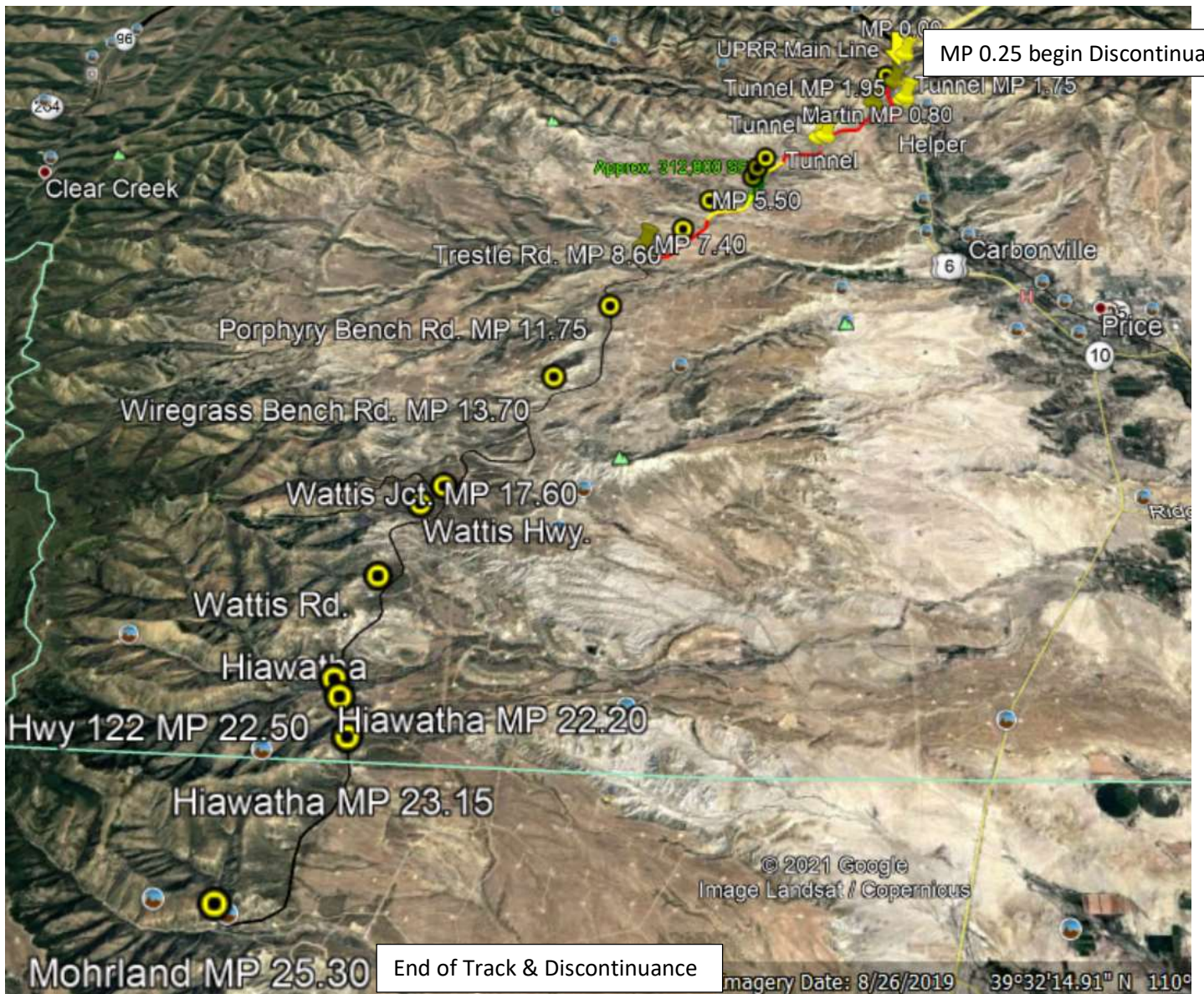


EXHIBIT B

DRAFT FEDERAL REGISTER NOTICE

STB No. AB-310X (Sub No. 3X)

Notice of Petition for Exemption to Discontinue Rail Service

On August 30, 2021, Utah Railway Company (UTAH) filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the discontinuance of service on a line of railroad extending from railroad milepost 0.25 near Helper, UT in Carbon County and approximately milepost 25.3 near Mohrland, UT in Emery County, a distance of approximately 25.05 miles. The line for which the discontinuance exemption request was filed includes the stations at Martin at milepost 0.8 and Wildcat at milepost 6.2.

Because this proceeding would involve the discontinuance of common carrier service and not abandonment of the Subject Line, UTAH understands that the question of whether the Subject Line contains federally granted rights-of-way is inapplicable. Any documentation related to title in UTAH's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line Railroad Co. - Abandonment -- Goshen*, 360 I.C.C. 91 (1979).

Any offer of financial assistance to subsidize will be due no later than 10 days after service of a decision granting the petition for exemption.

Because the Subject Line will continue to be operated following discontinuance, the Subject Line is not suitable for other public use, including interim trail use.

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

Because UTAH seeks only discontinuance and not abandonment, UTAH will not be disposing of or altering the Subject Line or any structures that are 50 years old or older. An environmental and historic report is not required for a discontinuance proceeding.

EXHIBIT C

NEWSPAPER NOTICE

PROOF OF PUBLICATION AFFIDAVIT

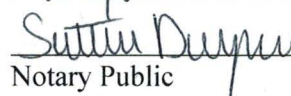
I, Traci Bishop, being first duly sworn, state that I am the Associate Editor of ETV News, a weekly newspaper of general circulation published at Price, County of Carbon, State of Utah; and that the advertisement or notice, a printed copy of which is attached hereto, was printed and published in said newspaper for one issue and on www.utahlegals.com website as follows:

August 11, 2021



Traci Bishop, Associate Editor

Subscribed to and sworn before me this 25th day of August, 2021.


Notary Public

NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE

Utah Railway Company (UTAH) issues this notice that on or about August 16, 2021, it intends to file with the Surface Transportation Board (STB), Washington, DC 20423, a petition for exemption pursuant to the provisions of 49 CFR Part 1152 Subpart F – *Exempt Abandonments and Discontinuances of Service and Trackage Rights* to permit UTAH to discontinue service over approximately 25.05 miles of the line of railroad between milepost .25 near Helper, UT in Carbon County and approximately milepost 25.3 near Mohrland, UT in Emery County (the Line). The Line traverses through United States ZIP Codes 84526, 84501, 84527, and 84528. The UTAH proceeding will be docketed as STB Docket No. AB – 310 (Sub. No. 3X).

Because the proposed action entails the discontinuance of service over the Line, rather than abandonment, no environmental or historic documentation is required under 49 CFR 1105.6 and 1105.8. Appropriate offers of financial assistance to subsidize rail service can be filed with the STB. Trail use / rail banking and public use condition requests are not appropriate in discontinuance proceedings.

An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance to subsidize rail service) must be filed directly with the STB's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423-0001 [see 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant's representative [see 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance may be directed to the STB's Office of Public Assistance, Governmental Affairs and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on UTAH's representative: Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. N.W. Suite 1300 South, Washington, DC 20004; 202-772-0916.

Published in the ETV Newspaper August 11, 2021.

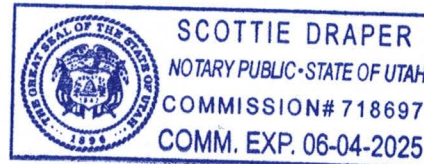


EXHIBIT D

10 DAY NOTICES



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1001 Pennsylvania Avenue N.W.
Suite 1300 South
Washington, DC 20004
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August 4, 2021

ALL PARTIES ON THE ATTACHED SERVICE LIST

Re: Utah Railway Company
– Discontinuance Exemption –
in Carbon and Emery Counties, Utah
Docket No. AB 310 (Sub. No. 3X)

Dear Sir or Madam:

This letter is being sent to you pursuant to the requirements of 49 C.F.R. § 1152.50(d), to advise you that Utah Railway Company ("UTAH") plans to seek authorization from the Surface Transportation Board ("STB") to discontinue service over the line of railroad described below, by filing a petition for exemption pursuant to the provisions of 49 CFR Part 1152 Subpart F. UTAH expects to file the petition for exemption with the STB on or about August 16, 2021, under STB Docket No. AB 310 (Sub No. 3X).

UTAH will invoke the STB's exemption procedures to discontinue service of the line of railroad between approximately milepost .25 near Helper, UT in Carbon County and approximately milepost 25.3 near Mohrland, UT in Emery County (the Line). UTAH intends to lease a portion of the Line to the only remaining customer on the Line for use as private industry track.

The Line traverses through United States Zip Codes 84526, 84501, 84527, and 84528. A map of the Line is enclosed with this letter.

Because this proceeding would involve the discontinuance of common carrier service and not abandonment of the Line, UTAH understands that the question of whether the Line contains federally granted rights-of-way is inapplicable, and that the Line would not be suited at this time for alternative public use. Any pertinent documentation in the railroad's possession will be made available promptly to those requesting it.

August 4, 2021
Page 2

UTAH has no current plans to salvage the track along the Line as a result of discontinuance.

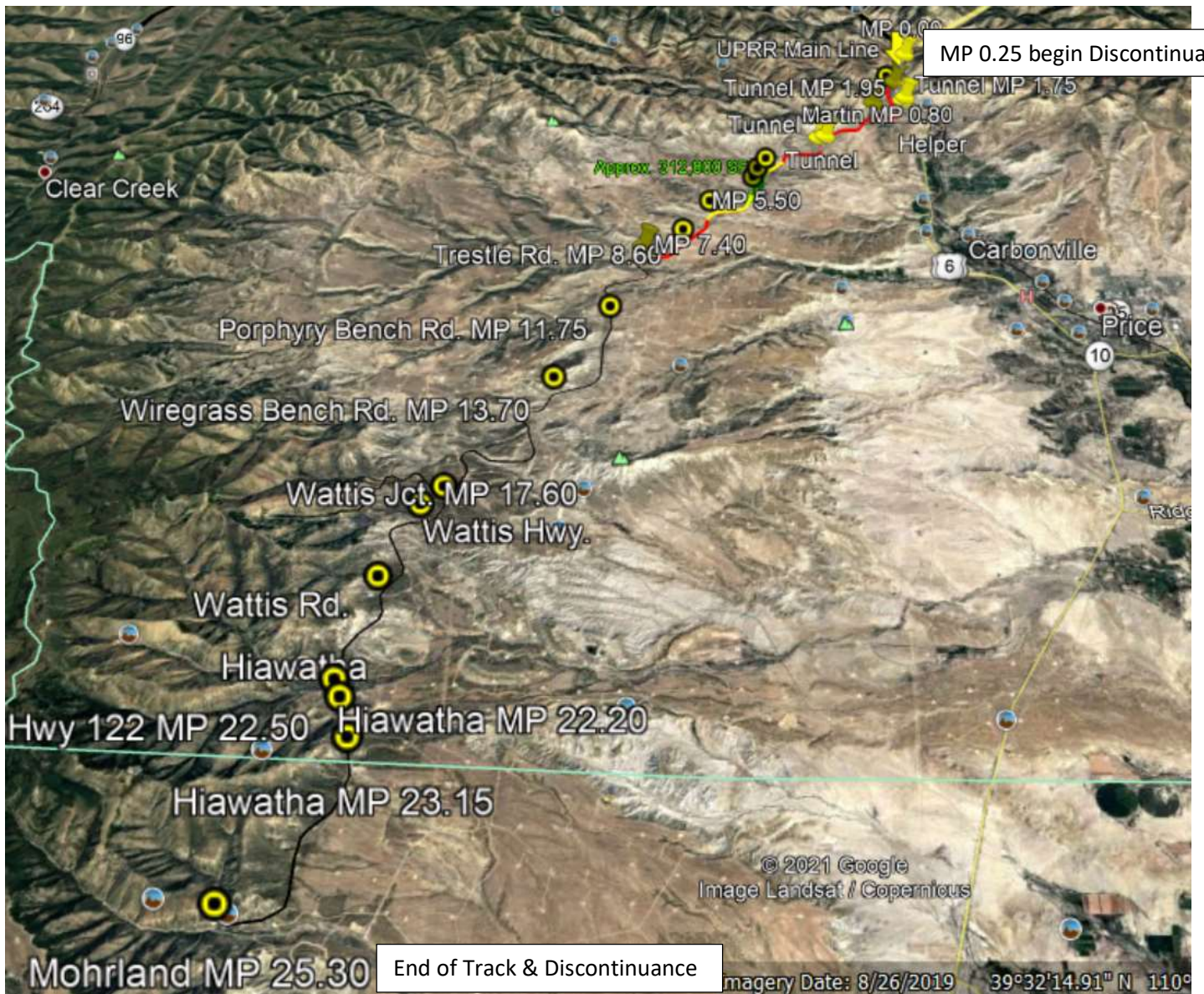
Sincerely,

A handwritten signature in blue ink that reads "Justin J. Marks". The signature is written in a cursive, flowing style.

Justin J. Marks
Counsel to Utah Railway Company

Enclosure





Advance Notice List under 1152.50

United States Department of the Army Military Surface Deployment and Distribution Command Transportation Engineering Agency ATTN: SDTE-SA (Railroads for National Defense) 1 Soldier Way, Building 1900W Scott AFB, IL 62225	U.S. Department of the Interior - National Park Service RTCA Program 1849 C Street, NW Washington, DC 20240
Office of Chief of Forest Service U.S. Department of Agriculture 1400 Independence Ave., SW Washington, DC 20250-1111	Utah Department of Transportation 4501 South 2700 West PO Box 141245 Salt Lake City, UT 84114-1245

EXHIBIT E

SUPPORT LETTER

August 10, 2021

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

Re: Utah Railway Company
– Discontinuance Exemption –
in Carbon and Emery Counties, Utah
Docket No. AB 310 (Sub. No. 3X)

Dear Ms. Brown:

Wildcat Midstream Limited Partnership (“Wildcat Midstream”) submits this letter in support of Utah Railway Company’s (“UTAH”) petition for exempt discontinuance of service on the line of railroad between milepost 0.25 near Helper, UT in Carbon County and milepost 25.3 near Mohrland, UT in Emery County (the “Line”).

We support the UTAH petition because the grant of discontinuance authority will facilitate Wildcat Midstream’s use of the Line as a private switch track. Further, UTAH’s discontinuance of the Line will not negatively impact rail service provided to us because UTAH will continue to serve the Line.

For the reasons set forth above, we respectfully request that the Board grant UTAH its petition for discontinuance authority over the Line.

Sincerely,



Joe Shotwell, President

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing Petition for Exempt Discontinuance was served on the persons shown on the attached list by email and/or first-class mail, postage prepaid.

UTAH Department of Transportation
P.O. Box 141245
Salt Lake City, UT 84114-1245

United States Department of the Army
Military Surface Deployment and Distribution
Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Building 1900W
Scott AFB, IL 62225

U.S. Department of the Interior -
National Park Service
RTCA Program
1849 C Street, NW
Washington, DC 20240

Office of Chief of Forest Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250-1111



Justin J. Marks

Dated: August 30, 2021