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September 30, 2021

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

By E-Filing

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

Re: Docket No. FD 36543, *City Utilities of Springfield, Missouri – Acquisition Exemption – Line of Railroad of BNSF Railway Company in Greene County, Missouri*

Dear Ms. Brown:

Accompanying this letter for filing in the referenced docket on behalf of City Utilities of Springfield Missouri ("City Utilities") is a Notice of Exemption for after-the-fact authority to acquire a 1.24-mile line of railroad from BNSF Railway Company.

Pursuant to 49 C.F.R. §1002.2(e), City Utilities respectfully requests a waiver of the \$2200 filing fee required for this filing. City Utilities is a community owned public utility created by the City Charter of the City of Springfield, Missouri. It is therefore a "local government agency" as that term is used in §1002.2(e). A waiver of the filing fee is also justified in these circumstances, where City Utilities has no intention of providing or receiving rail service over the track covered by the Notice, and indeed all operations over the tracks ceased in 2015. City Utilities therefore is not "acting in the capacity of a carrier or shipper or that owns or proposes to own a carrier and is before the agency in its proprietary role." *Id.* For these reasons, City Utilities requests the Office of Proceedings to waive the filing fee otherwise applicable to this Notice of Exemption.

Please do not hesitate to call me if you have any questions.

FEE RECEIVED

September 30, 2021

SURFACE

TRANSPORTATION BOARD

FILED

September 30, 2021

SURFACE

TRANSPORTATION BOARD

Sincerely,



Thomas W. Wilcox

Attorney for City Utilities of Springfield Missouri

Enclosure

**BEFORE THE UNITED STATES
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36543

**CITY UTILITIES OF SPRINGFIELD MISSOURI
– ACQUISITION EXEMPTION –
LINE OF BNSF RAILWAY COMPANY IN GREENE COUNTY, MISSOURI**

VERIFIED NOTICE OF EXEMPTION

Pursuant to 49 C.F.R. Part 1150, Subpart D, City Utilities of Springfield Missouri (“City Utilities”) a non-carrier and community owned utility formed pursuant to the laws of the State of Missouri, hereby files this Verified Notice of Exemption (“Notice”) for after-the-fact authority to acquire roughly 1.24 miles of railroad line extending from approximately Milepost 248.86 to approximately Milepost 250.1 in Greene County, Missouri (the “Line”). The Line was a segment of a longer line of railroad used by the Burlington Northern Railroad Company (“BN”) and then BNSF Railway Company (“BNSF”) to deliver coal to City Utilities’ James River Power Station (“JRPS”) until that facility ceased burning coal in 2015. No other rail shippers are located along the Line, which has been out of service since that time.

City Utilities previously acquired title to the Line and other tracks for which BN had received authority to abandon through conveyances from BN in 1986 and 1987. Specifically, City

Utilities acquired approximately two miles of BN's track extending from MP 248.6 to 250.83.¹ However, while recently performing due diligence as part of the process of converting the right-of-way into a multi-use recreational trail, City Utilities discovered that the 1.24 miles of track comprising the Line was technically still subject to the Board's jurisdiction and that City Utilities had inadvertently neglected to seek acquisition authority from the Board's predecessor the Interstate Commerce Commission ("ICC") as a part of the previous transactions with BN.

This Notice is for the purpose of belatedly obtaining that authority. Moreover, pursuant to Board rules and precedent, because the Line is subject to the Board's jurisdiction it must be formally abandoned pursuant to 49 U.S.C. §10903 before it can be converted to a multi-use trail.² City Utilities is therefore accompanying this Notice with a Petition for Exemption from the requirements of 49 U.S.C. §10903 that will be filed in Docket No. AB 1319 for the purpose of obtaining the requisite authority to abandon the Line.

In accordance with the requirements of 49 C.F.R. § 1150.33, City Utilities submits the following information:

A. Name and Address of Applicant: 49 C.F.R. §1150.33(a)

City Utilities of Springfield Missouri
301 East Central Street
Springfield, Missouri 65802

B. Applicant's Representative: 49 C.F.R. §1150.33(b)

Any questions concerning this Notice should be sent to counsel for City Utilities at the following address:

¹ On information and belief, the abandonment of BN's track beyond MP 250.1 was authorized by the ICC in Docket No. AB 6 (Sub-No. 148).

² STB Docket No. FD 36389, *Cattaraugus Local Development Corp. – Petition for Declaratory Order* and Docket No. AB 1300X, *Cattaraugus Local Development Corp. – Abandonment Exemption – In Cattaraugus County, N.Y.* (served August 5, 2020).

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C. Statement Concerning Agreement: 49 C.F.R. §1150.33(c)

As stated, the Line is an approximately 1.24-mile segment of a line of railroad historically used by BN and BNSF to deliver unit trains of coal to the JRPS, which first began operations in 1958 and ceased burning coal in 2015. At one time, the BN track extended beyond MP 248.86 to at least MP 257.6. In 1983 BN abandoned the line from MP 250.1 to MP 257.6 but it did not remove the tracks beyond MP 250.83. Subsequently, by two deeds dated January 15, 1986, and July 21, 1987, respectively, BN conveyed to City Utilities the segment of the track from approximately MP 248.86 to approximately MP 250.83. Consequently, the track acquired by City Utilities from BN was composed of track that had been formally abandoned and track that technically was still subject to the ICC's jurisdiction, namely the 1.24-mile segment between MP 248.86 and MP 250.1 at issue in this Notice. However, as stated, City Utilities recently discovered that it had inadvertently neglected to seek authorization to acquire this segment of the overall two miles of tracks it acquired from BN.

After conveying the Line to City Utilities BN, and then BNSF, continued to provide rail transportation services to the JRPS over the track, delivering unit trains of coal until the JRPSS ceased burning coal for fuel in 2015. There are no other shippers located on the line, and so it has been unused since that time. The JRPS was decommissioned in January 2021. Having recently discovered that the Line is still technically subject to the Board's jurisdiction, City Utilities is now seeking after-the-fact authority to acquire the line in conjunction with a to-be-filed Petition for Exemption from the Requirements of 49 U.S.C. §10903 to formally abandon the line and remove

the track so the right-of-way may be converted to a multi-use trail and be incorporated into a regional trail system.

D. Operator of the Property: 49 C.F.R. §1150.33(d)

There is no current operator of the Line, nor will any rail operations be conducted on the Line for the reasons set forth above. As stated, the intent is for the Line to be formally abandoned, the track removed, and the right-of-way to become part of a regional multi-use recreational trail system.

E. Summary of the Transaction: 49 C.F.R. § 1150.33(e)

As stated above, title the Line and underlying right-of-way was previously conveyed to City Utilities by BN through deeds dated January 15, 1986, and July 21, 1987.

F. Map: 49 C.F.R. 1150.33(f)

A map showing the Line is attached as Exhibit A to this Notice.

G. Certificate of Compliance: 49 C.F.R. 1150.33(g)

This section is inapplicable because there is no intention for City Utilities (or any other party) to conduct common carrier rail operations on the Line.

H. Interchange Commitments: 49 C.F.R. §1150.33(h)

This section is also inapplicable because no rail operations will be conducted over the Line, but City Utilities states that the deeds from BN conveying it the Line did not contain any provisions that limited future interchange with a third-party connecting carrier.

I. Advance Notice: 49 C.F.R. 1150.32(e)

The advance notice to employees required by this regulation is not applicable because the no rail operations will be conducted over the Line by City Utilities or any other party and so annual revenues of will not exceed \$5 million.

J. Environmental and Historic Impacts: 49 C.F.R. § 1105

Under 49 C.F.R. § 1105.6(c), the proposed transaction is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, *i.e.* changes that exceed the thresholds established in 49 C.F.R. §1105.7(e)(4) or (5). Under 49 C.F.R. § 1105.8(b)(1), the proposed transaction also is exempt from historic preservation reporting requirements. The proposed acquisition will not change any current rail operations nor substantially change the level of maintenance of rail property. As noted, this Notice is being accompanied by a Petition for Exemption from the requirements of 49 U.S.C. §10903 for the purpose of enabling City Utilities to formally abandon the Line pursuant to the Board's rules and precedent. In compliance with those rules City Utilities has prepared a combined Environmental and Historic Report and served it in on all necessary parties in conjunction with its abandonment petition.

Caption Summary: 49 C.F.R. §1150.32(a)

A caption summary complying with the format in 49 C.F.R. §1150.34 is attached as Exhibit B.

Respectfully submitted,



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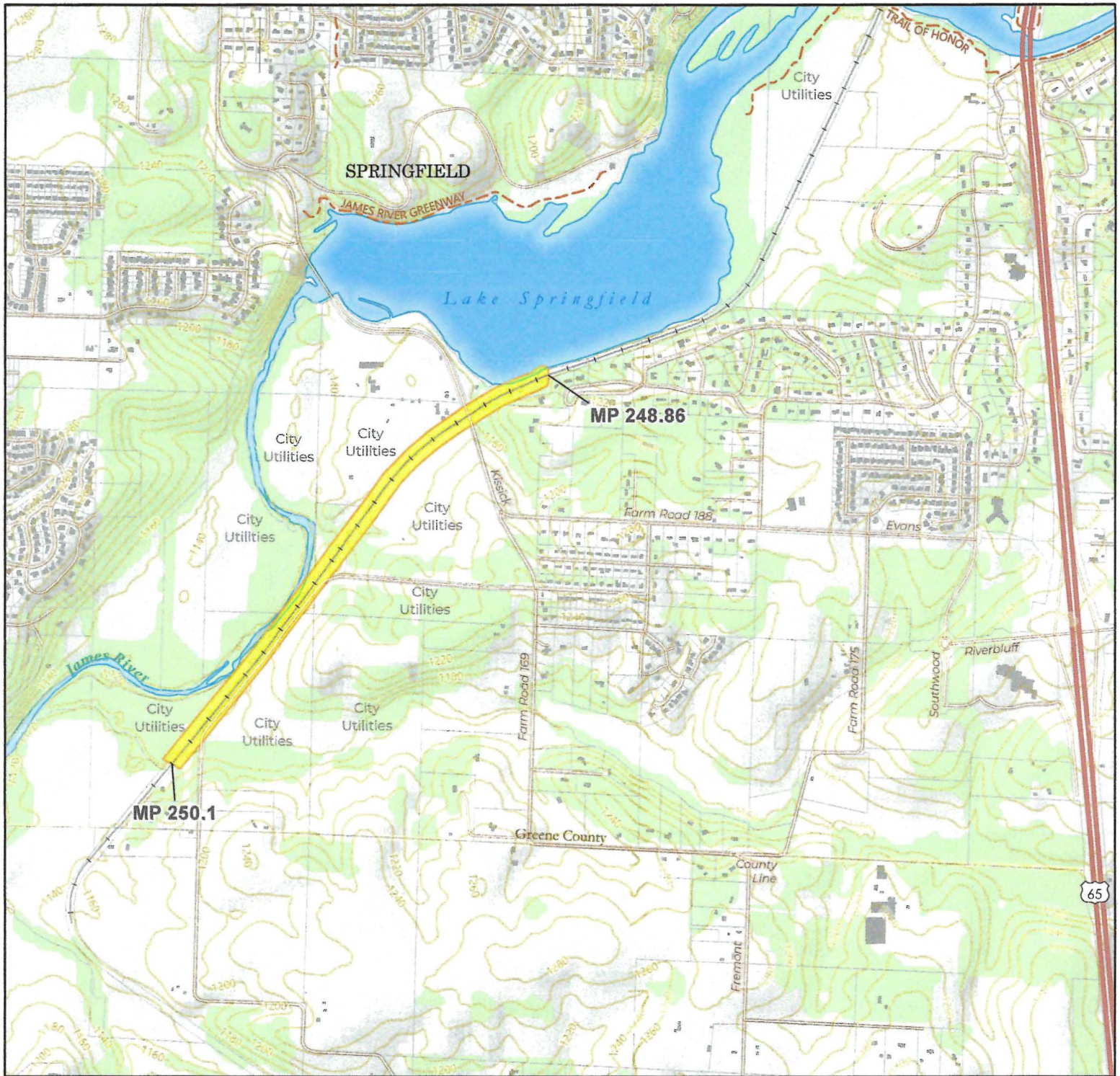
*Attorney for City Utilities of Springfield
Missouri*

Dated: September 30, 2021

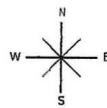
EXHIBIT A

MAP

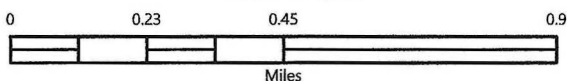
Project Area Location



- | | |
|--------------|-----------------------------|
| Project Area | Highway |
| Waterbody | Railroad |
| Structures | Minor Roads |
| Land Parcels | Existing Trails & Greenways |
| Woodlands | Elevation Contours |



Scale: 1:20,000



This map was prepared by the Ozarks Transportation Organization on 7/28/2021. Data sources include the National Hydrography Dataset, USGS LULC 2016 dataset, Greene County Assessor, Christian County Assessor, City of Springfield Open Data Portal: Road Centerlines, Missouri 7.5 Minute Series Quadrangle 30 meter Digital Elevation Models, and Microsoft/Bing Building Footprints.

Spatial Reference

Name: NAD 1983 StatePlane Missouri Central FIPS 2402 Feet

EXHIBIT B
CAPTION SUMMARY

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36543

**CITY UTILITIES OF SPRINGFIELD MISSOURI
– ACQUISITION EXEMPTION –
LINE OF BNSF RAILWAY COMPANY IN GREENE COUNTY, MISSOURI**

City Utilities of Springfield, Missouri, a non-carrier, has filed a notice of exemption to acquire from the BNSF Railway Company (“BNSF”) roughly 1.24 miles of railroad extending from approximately Milepost 248.86 to approximately Milepost 250.1 in unincorporated Greene County, Missouri (the “Line”). The Line was a subset of a longer line of railroad used by the Burlington Northern Railroad Company (“BN”) and then BNSF Railway Company (“BNSF”) to deliver coal to City Utilities’ James River Power Station (“JRPS”) until the facility ceased burning coal in 2015. City Utilities previously acquired title to the Line and other track from the BN through two conveyances in 1986 and 1987. However, while recently conducting due diligence as part of the process to convert the right-of-way into a multi-use recreational trail, City Utilities discovered it had inadvertently neglected to seek authority to acquire the Line from the Board’s predecessor, the Interstate Commerce Commission (“ICC”), as part of the prior transactions.

Having discovered that the Line is still technically subject to the Board’s jurisdiction, City Utilities is seeking after-the-fact authority to acquire the line. City Utilities also intends to file a

Petition for Exemption from the requirements of 49 U.S.C. §10903 in Docket No. AB 1319 to obtain authority to formally abandon the Line so it may remove the tracks and enable the right-of-way may to be converted to a multi-use recreational trail that will be incorporated into a regional trail system.

Comments must be filed with the Board and served on:

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tom@twilcoxlaw.com

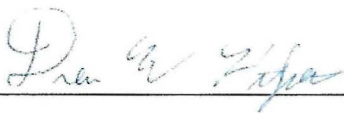
The notice is filed under §1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

CERTIFICATION AND VERIFICATION

I, Drew Hilpert, hereby certify and declare under penalty of perjury as follows:

1. I am Deputy General Counsel of City Utilities of Springfield Missouri.
2. There will be no rail operations over the Line and so annual revenues of City Utilities from the Line will not exceed levels that would result in City Utilities becoming a rail carrier under any of the thresholds set forth in 49 C.F.R. Part 1201.
3. I have read the foregoing Verified Notice of Exemption and know that the factual information contained herein is true and correct.

Executed: September 30, 2021



Title: Deputy General Counsel