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ATTORNEYS AT LAW

A. REBECCA WILLIAMS

November 3, 2021

303156

VIA ELECTRONIC FILING

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

ENTERED
Office of Proceedings
November 3, 2021
Part of
Public Record

Re: Docket No. AB 1314X, The Elk River Railroad, Inc. –
Abandonment Exemption – In Kanawha & Clay Counties, WV

Dear Ms. Brown:

Enclosed for e-filing in the above referenced docket, please find a Motion to Amend the Verified Notice of Exemption for Abandonment, submitted on behalf of The Elk River Railroad, Inc. (“TERRI”) on July 2, 2021 pursuant to 49 C.F.R. § 1152.50.

Please contact the undersigned if you have any questions regarding this Motion. Thank you for your attention to this matter.

Respectfully submitted,

A. Rebecca Williams

An Attorney for The Elk River Railroad, Inc.

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

THE ELK RIVER RAILROAD, INC. –	)	
Abandonment Exemption – In Kanawha &	)	
Clay Counties, WV	)	Docket No. AB 1314X
	)	

**THE ELK RIVER RAILROAD, INC.
MOTION TO AMEND VERIFIED NOTICE OF EXEMPTION**

THE ELK RIVER RAILROAD, INC.

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Its Attorneys

Dated: November 3, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

	)	
THE ELK RIVER RAILROAD, INC. –	)	
Abandonment Exemption – In Kanawha &	)	Docket No. AB 1314X
Clay Counties, WV	)	
	)	

MOTION TO AMEND NOTICE OF EXEMPTION

The Elk River Railroad, Inc. (“TERRI”), a Class III railroad, hereby submits this Motion to the Surface Transportation Board (“STB” or “Board”) seeking to amend its Verified Notice of Exemption filed in this proceeding to remove the approximately 28.8-mile segment of rail line located between milepost (“MP”) 96.0 (at or near Clendenin, WV) and MP 67.2 (at or near Hartland, WV) (“Segment”) from the scope of the requested abandonment exemption.

BACKGROUND

On July 2, 2021, TERRI filed its Verified Notice of Exemption for Abandonment pursuant to the class exemption procedures at 49 C.F.R. § 1152.50 (“Notice”) for the abandonment of approximately 53.4 miles of rail line between Milepost (“MP”) 96.0 (at or near Clendenin, WV) and MP 43.6 (at or near North Line, south of Duck, WV), including the 0.8 miles extending south from MP 67.2 (at or near Hartland, WV) known as the Middle Creek Spur, in Kanawha and Clay Counties, West Virginia (the “Line”). As stated in TERRI’s Notice, the Line does not serve any customers, and no traffic has moved over the line in over 20 years. Thus, TERRI’s intention in filing the Notice was to receive abandonment authority for the entire Line, then, subject to Board authorization, transfer the Line to the West Virginia State Rail Authority (“WVSRA”) for railbanking and interim trail use of the Line as a pedestrian and bicycle trail, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (“Trails Act”) and

49 C.F.R. § 1152.29. The West Virginia Department of Natural Resources (“WVDNR”) would then operate the Trail as a State Park.

As TERRI stated in its Notice, the previous owner of the lower portion of the Line (the Clendenin to Hartland Segment, located between MP 96.0 and MP 67.2), the Baltimore and Ohio Railroad Co. (B&O) abandoned the Segment in 1979 and subsequently removed all track, crossties, ballast and bridge steel by 1981. On October 7, 2021, the Board served a Decision regarding TERRI’s requested exemption in which the Board stated its “jurisdiction over the [Clendenin to Hartland] Segment terminated when the Segment was abandoned,” and “[s]ince the Segment was previously abandoned, if TERRI did not exercise the authority [to construct and operate the Segment] granted in Docket No. FD 31989, the Segment is not currently within the Board’s jurisdiction” Decision at 3. In light of the Board’s guidance, TERRI concludes that the Clendenin to Hartland Segment “is not currently within the Board’s jurisdiction” and respectfully requests to amend its Notice of Exemption to withdraw the Clendenin to Hartland Segment of the Line from the scope of TERRI’s requested abandonment exemption.

REQUEST TO AMEND NOTICE

In accordance with the Board’s guidance in the October 7, 2021 Decision, TERRI seeks to amend its Notice to remove the Clendenin to Hartland Segment from the scope of the requested abandonment exemption, and reiterates its request with regard to the remaining 24.6 miles of rail line extending from Hartland (MP 67.2) to MP 43.6 (at or near North Line, south of Duck, WV), including the 0.8 miles extending south from MP 67.2 (at or near Hartland, WV) known as the Middle Creek Spur, in Clay County, WV. An updated map of the Line – revised to reflect the amended scope of the proposed abandonment – is attached hereto as **Exhibit A**.

The Board has consistently granted requests to withdraw or modify the scope of Notices of Exemption. *See, e.g., Union Pac. R.R. – Abandonment Exemption – in Polk Cnty., Iowa*, Docket No. AB 33 (Sub-No. 310X) (STB served Sept. 24, 2012) (granting carrier’s request to amend notice of exemption to remove segment of rail line from scope of abandonment exemption and granting trail sponsors’ request for a notice of interim trail use with regard to remaining segment); *Burlington N. & Santa Fe Ry. – Abandonment Exemption – in Hamilton & Merrick Cntys., Neb.*, Docket No. AB-6 (Sub-No. 408X) (STB served May 26, 2004) (same).

The remainder of the Line is clearly within the Board’s jurisdiction, and the amended proposed abandonment meets the criteria under 49 C.F.R. § 1152.50(b), as no traffic has moved over the Line in over 20 years and there are no active shippers on the Line. *See* Notice, Ex. A (certification by TERRI’s President). Thus, detailed review is “not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101,” as the transaction is “of limited scope and continued regulation is unnecessary to protect shippers from abuse of market power.” *Id.* § 1152.50(c). TERRI and WVSRA still intend to railbank the Line (not including the Clendenin to Hartland Segment) under the Trails Act and have negotiated – and intend to execute – an agreement to do so. To that end, TERRI anticipates that within ten (10) days of the STB publishing Notice in the Federal Register, WVSRA will petition the Board for a notice of interim trail use pursuant to 49 C.F.R. § 1152.29.

CONCLUSION

For the reasons stated herein, TERRI respectfully requests that the Board amend TERRI's Notice of Exemption to remove the Clendenin to Hartland Segment of the Line from the scope of TERRI's requested abandonment exemption, reinstate the proceedings, and expeditiously publish notice in the Federal Register, consistent with the Board's regulations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Williams' or 'A. Williamsy', written in a cursive style.

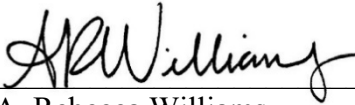
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*Attorneys for The Elk River
Railroad, Inc.*

Dated: November 3, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2021, I caused true and correct copies of the foregoing Motion to Amend TERRI's Verified Notice of Exemption to be served via first-class mail, or more expeditious means, on all parties of record in this proceeding.



A. Rebecca Williams

An Attorney for The Elk River Railroad, Inc.

Dated: November 3, 2021

EXHIBIT A

MAP OF LINE

