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April 8, 2022

304260

## VIA ELECTRONIC FILING

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings  
April 8, 2022  
Part of  
Public Record

Re: **AB 853 (Sub-No. 4X)**  
**Kansas & Oklahoma Railroad, L.L.C. — Discontinuance of Service**  
**Exemption — In Crowley, Pueblo, and Otero Counties, Colo.**

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is a **Petition for Exemption of Kansas & Oklahoma Railroad, L.L.C.** dated April 8, 2022. The filing fee for this matter has been tendered electronically via Pay.gov.

If you have any questions regarding this filing, please feel free to contact me.  
Thank you for your assistance on this matter.

Respectfully submitted,



Bradon J. Smith  
Attorney for Kansas & Oklahoma Railroad, L.L.C.

BJS:bs

Attachments

**FILED**  
April 8, 2022  
**SURFACE**  
**TRANSPORTATION BOARD**

**FEE RECEIVED**  
April 8, 2022  
**SURFACE**  
**TRANSPORTATION BOARD**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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AB 853 (SUB-NO. 4X)

KANSAS & OKLAHOMA RAILROAD, L.L.C.  
— DISCONTINUANCE OF SERVICE EXEMPTION —  
IN CROWLEY, PUEBLO, OTERO, AND KIOWA COUNTIES, COLO.

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**DISCONTINUANCE PETITION FOR EXEMPTION OF  
KANSAS & OKLAHOMA RAILROAD, L.L.C.**

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**ATTORNEYS FOR KANSAS & OKLAHOMA  
RAILROAD, L.L.C.**

Dated: April 8, 2022

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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AB 853 (SUB-NO. 4X)

KANSAS & OKLAHOMA RAILROAD, L.L.C.  
— DISCONTINUANCE OF SERVICE EXEMPTION —  
IN CROWLEY, PUEBLO, OTERO, AND KIOWA COUNTIES, COLO.

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**DISCONTINUANCE PETITION FOR EXEMPTION OF  
KANSAS & OKLAHOMA RAILROAD, L.L.C.**

Pursuant to 49 U.S.C. § 10502 and corresponding regulations at 49 C.F.R. Parts 1121 and 1152, subpart G, Kansas & Oklahoma Railroad, L.L.C. (“K&O”) hereby petitions the Board to exempt from the formal regulatory requirements of 49 U.S.C. § 10903 K&O’s proposed discontinuance of service over a 121.9-mile railroad line (the “Towner Line”) between milepost 747.5 at Towner and milepost 869.4 near NA Junction in the Colorado counties of Crowley, Pueblo, Otero, and Kiowa. A map showing the Towner Line is attached as Exhibit A. A draft *Federal Register* notice adhering to the requirements of 49 C.F.R. § 1152.60(c) is attached as Exhibit B.

The proposed discontinuance will allow K&O to end its common carrier rail service obligation over the Towner Line consistent with the plans of the Towner Line’s owner, Colorado Pacific Railroad, LLC (“CXR”),<sup>1</sup> to commence operations. Thus, the proposed

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<sup>1</sup> See *Kansas & Oklahoma Railroad, L.L.C. — Operation Exemption — Colorado Pacific Railroad, L.L.C.*, FD 36310 (STB served Jun. 14, 2019) (identifying CXR as line owner); *KCVN LLC — Feeder Line Application — Line of V&S Rwy. in Crowley, Pueblo, Otero and Kiowa Counties. Colo.*, FD 36005 (STB served Dec. 18, 2017) (authorizing transfer of the Towner Line to CXR).

discontinuance will leave no Towner Line customer without access to railroad common carrier service, as any such customers would have service via CXR. As discussed below, K&O's petition satisfies the 49 U.S.C. § 10502(a)(1) exemption criteria, and, thus, should be granted.

## **I. The Petitioner**

K&O is a Class III rail carrier currently operating hundreds of miles of track in Kansas and Colorado. K&O is a wholly-owned subsidiary of Watco Holdings, Inc., which controls numerous rail carrier subsidiaries operating in 28 states.

The complete name and address of K&O is:

Kansas & Oklahoma Railroad, L.L.C.  
315 W. 3<sup>rd</sup> St.  
Pittsburg, Kansas 66762

## **II. Description of the Towner Line**

The Towner Line is roughly 121.9 miles long, extending between milepost 747.5 at Towner and milepost 869.4 near NA Junction in the Colorado counties of Crowley, Pueblo, Otero, and Kiowa. The Towner Line traverses United States Postal Service ZIP Codes 81022, 81025, 81062, 81033, 81063, 81076, 81050, 81021, 81045, 81036, and 81071. To the extent it may be relevant to the subject discontinuance proceeding, based on information in its possession—which is limited, as a non-owner—K&O is unaware if the Towner Line contains federally-granted rights-of-way.<sup>2</sup> K&O will make any documentation that it may have concerning federally-granted rights-of-way available promptly to anyone requesting it.

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<sup>2</sup> This may be of little relevance where, as here, CXR has, and will assume, responsibility for the provision of common carrier service over the Towner Line, and, as such, CXR would require further STB authority to abandon the Towner Line.

### **III. Jurisdiction and Statutory Standards**

The Board has jurisdiction over K&O's proposed discontinuance of Towner Line service pursuant to 49 U.S.C. § 10903. Generally, Section 10903 requires a rail carrier to receive formal Board authority under an application procedure to discontinue service. However, 49 U.S.C. § 10502(a) requires the Board to exempt a person, transaction or service from the statutory and regulatory requirements otherwise applicable to a rail carrier when the Board determines – (1) application of those requirements is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (the “RTP”); and (2) either (a) the transaction is of limited scope or (b) regulation is not needed to protect shippers from an abuse of market power.

#### **A. The Exemption Serves the RTP**

The RTP requires the Board to minimize the need for federal regulatory control over the rail transportation system, reduce barriers to exit, and expedite regulatory decisions. See 49 U.S.C. §§ 10101(2), (7), and (15). The Board previously—and repeatedly—has recognized that exempting certain discontinuances of service from the formal requirements of Section 10903 serves these three elements of the RTP in satisfaction of 49 U.S.C. § 10502(a)(1) exemption criteria.<sup>3</sup>

This is the case here. The requested discontinuance exemption would – (a) minimize the need for regulatory control over K&O's operations of the Towner Line in accordance with 49 U.S.C. § 10101(2); (b) eliminate a regulatory barrier to K&O's exit consistent with 49 U.S.C. § 10101(7); and (c) expedite the processes to accommodate an agreed-

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<sup>3</sup> *E.g., Savage, Bingham & Garfield Railroad Company — Discontinuance of Trackage Rights Exemption — In Whiting, Ind.*, Docket No. AB 1271X (STB served Mar. 1, 2019), 2 (“An exemption would expedite regulatory decisions, reduce regulatory barriers to exit, and provide for the expeditious handling and resolution of proceedings. 49 U.S.C. § 10101(2), (7), and (15)”) (citation in original).

upon transition from K&O operations to those of CXR, consistent with 49 U.S.C. § 10101(15). The exemption would also obviate the need for the expensive and time-consuming processes a formal application under 49 U.S.C. § 10903 and 49 C.F.R. Part 1152 would require and is consistent with Board's Section 10502(a) mandate and its incorporation of 49 U.S.C. § 10101.

**B. The Transaction Is of Limited Scope**

The underlying transaction is a step in a mutually-agreed-upon transition from leasehold operations on the Towner Line (by K&O) to owner operation (by CXR). Because CXR has a pre-existing common carrier status (and obligation) to customers, and CXR will fulfill that obligation going forward. The proposed discontinuance is not expected to have any material bearing on shippers, as there are, currently, no active railroad service customers on the Towner Line. Under these circumstances, the proposed discontinuance is clearly of limited scope, and is of negligible impact (if any).

**C. Regulation Is Not Necessary to Protect Shippers from Market Power Abuse**

Since this transaction is of limited scope, K&O need not demonstrate that regulation is necessary to protect shippers from market power abuse. 49 U.S.C. § 10502(a)(2). Even so, this transaction will not, and cannot, subject shippers to any market power abuse. Shippers will have access to short line carrier service by way of CXR.

**V. Level of Labor Protection to be Imposed**

The Board established the appropriate level of labor protection for the abandonment proposed herein in *Oregon Short Line R.R. – Abandonment – Goshen*, 360 I.C.C. 91 (1979); K&O anticipates that the proposed discontinuance will be subject to the conditions set forth in that decision.

## **VI. Environmental Impact Review, Interim Trails Use and Public Use Conditions**

As a general rule, the Board does not require a carrier seeking to discontinue service over a rail line (as opposed to seeking to abandon it) to prepare and submit a combined environmental and historic report under 49 C.F.R. §§ 1105.6(c) and 1105.8(b).<sup>4</sup> K&O submits that the Board's general rule applies to this discontinuance proceeding, and has dispensed with the preparation of a combined environmental and historic report. K&O does not intend to undertake salvage activity or to alter or destroy any historic structures that may exist along the Towner Line segment upon receipt of discontinuance authority, and has no legal authority to do so anyway, as a leasehold operator. CXR's operations in place of K&O necessarily means K&O's discontinuance will not result in rail line salvage, and thus no rail-to-truck diversions would result to trigger potential air quality (emissions) impacts.

In addition, because this is not an abandonment proceeding, interim trail use/rail banking and public use conditions are not appropriate.

WHEREFORE, K&O respectfully requests that the Board exempt from the prior approval requirements of 49 U.S.C. § 10903 K&O's discontinuance of service on a 121.9-mile railroad line between milepost 747.5 at Towner and milepost 869.4 near NA Junction in the Colorado counties of Crowley, Pueblo, Otero, and Kiowa.

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<sup>4</sup> See, e.g., *Norfolk Southern Railway Company — Discontinuance of Service Exemption — in Isle of Wight, Southampton, Greenville, and Brunswick Counties, Va.*, Docket No. AB 290 (Sub-No. 359X) (STB served Dec. 16, 2013) at 2 (“Because this is a discontinuance proceeding and not an abandonment, . . . no environmental or historical documentation is required”); *Columbus and Greenville Railway Company — Discontinuance of Service Exemption — in Greenwood, MS*, Docket No. AB 297 (Sub-No. 103X) (STB served July 3, 2007) at 2 n.2 (same); *Chillicothe-Brunswick Rail Maintenance Authority—Discontinuance Exemption—in Livingston, Linn, and Chariton Counties, MO*, STB Docket No. AB 1001X (STB served Feb 23, 2007) at 2 n.3 (same).

Respectfully submitted,

By: /s/ *R. A. Wimbish*

Robert A. Wimbish

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**ATTORNEYS FOR KANSAS & OKLAHOMA  
RAILROAD, L.L.C.**

Dated: April 8, 2022

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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AB 853 (SUB-NO. 4X)

KANSAS & OKLAHOMA RAILROAD, L.L.C.  
— DISCONTINUANCE OF SERVICE EXEMPTION —  
IN CROWLEY, PUEBLO, OTERO, AND KIOWA COUNTIES, COLO.

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**EXHIBIT A**

**MAP**

**Docket No. AB 853 (Sub No. 4X) Kansas & Oklahoma  
Railroad, L.L.C. - Discontinuance Exemption - In Pueblo,  
Crowley, Otero and Kiowa Counties, Colorado**



BEFORE THE  
SURFACE TRANSPORTATION BOARD

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AB 853 (SUB-NO. 4X)

KANSAS & OKLAHOMA RAILROAD, L.L.C.  
— DISCONTINUANCE OF SERVICE EXEMPTION —  
IN CROWLEY, PUEBLO, OTERO, AND KIOWA COUNTIES, COLO.

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**EXHIBIT B**

**DRAFT FEDERAL REGISTER NOTICE**

STB No. AB 853 (Sub-No. 4X)

Notice of Petition for Exemption to Discontinue Service

On April 8, 2022, Kansas & Oklahoma Railroad, L.L.C. (K&O) filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the discontinuance of service on a roughly 121.9-mile railroad line (the “Towner Line”) between milepost 747.5 at Towner and milepost 869.4 near NA Junction in the Colorado counties of Crowley, Pueblo, Otero, and Kiowa. The Towner Line traverses United States Postal Service Zip Codes 81022, 81025, 81062, 81033, 81063, 81076, 81050, 81021, 81045, 81036, and 81071.

To the best of K&O’s knowledge as a leasehold operator, the Colorado Pacific Railroad L.L.C.-owned Towner Line does not contain federally granted rights-of-way. Documentation in the K&O’s possession regarding federally-granted rights-of-way, if any (and if relevant), will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad — Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

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

Because this is a discontinuance proceeding and not an abandonment proceeding, interim trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 C.F.R. §§ 1105.6(c)(2) and 1105.8(b).

Persons seeking further information concerning discontinuance procedures may contact the Surface Transportation Board or refer to the full abandonment and discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the

Board's Office of Environmental Analysis (OEA) at (202) 245-0305. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1-800-877-8339.]

All filings in response to this notice must refer to Docket No. AB 543 (Sub-No. 4X) and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-2832. Replies to the petition are due on or before \_\_\_\_\_, 2022.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238 or refer to the full abandonment and discontinuance regulations at 49 C.F.R. part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245-0305. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1-800-877-8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: \_\_\_\_\_, 2020.

By the Board, \_\_\_\_\_, Office of Proceedings.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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AB 853 (SUB-NO. 4X)

KANSAS & OKLAHOMA RAILROAD, L.L.C.  
— DISCONTINUANCE OF SERVICE EXEMPTION —  
IN CROWLEY, PUEBLO, OTERO, AND KIOWA COUNTIES, COLO.

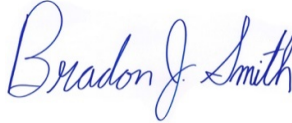
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**EXHIBIT C**

**CERTIFICATE OF PUBLICATION**

### **CERTIFICATE OF NEWSPAPER PUBLICATION**

I certify that a “Notice of Petition to Discontinue Rail Service” was published in the form prescribed by the Surface Transportation Board for a petition for exemption (49 C.F.R. § 1105.12). The notice was published on April 8, 2022 in the *Pueblo Chieftain*, a newspaper of general circulation in the Colorado counties of Pueblo, Crowley, and Otero and in the *Kiowa County Press*, a newspaper of general circulation in the Colorado counties of Kiowa, Crowley, and Otero.



Date: April 8, 2022

Bradon J. Smith  
Attorney for Kansas & Oklahoma Railroad, L.L.C.