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December 29, 2022

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VIA E-FILING

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

ENTERED
Office of Proceedings
December 29, 2022
Part of
Public Record

Re: **STB Docket No. AB-575 (Sub-No. 2X), Montana Rail Link, Inc.—Discontinuance of Service Exemption—in Yellowstone, Stillwater, Sweet Grass, Park, Gallatin, Broadwater, Jefferson, Lewis and Clark, Powell, Deer Lodge, Granite, Missoula, Lake, Mineral, and Sanders Counties, Mont.; Bonner and Kootenai Counties, Idaho; and Spokane County, Wash.**

Dear Ms. Brown:

I write on behalf of BNSF Railway Company (“BNSF”) regarding the above-referenced proceeding. As explained in Montana Rail Link, Inc.’s (“MRL”) petition for exemption, filed November 18, 2022, following the proposed discontinuance of MRL’s operations over lines owned by BNSF, BNSF will resume operations and maintenance of the subject lines. BNSF’s continued operation of the lines will ensure that customers continue to have access to consistent, reliable, nationwide freight rail service to effectively compete in global markets.

On December 28, 2022, BNSF received a copy of a letter dated December 23, 2022, from Southeast Railroad, LLC (“SERR”) to Chairman Oberman. In the letter, SERR expresses concerns about the impact the proposed transaction would have on SERR and similarly situated customers. I have provided below important details and clarifications regarding this matter.

First, SERR states that it is a small railroad company owned by the signatories, Liz Cohernour and David Winters. BNSF believes that SERR is neither a rail carrier that operates common carrier passenger trains or owns rail lines, nor a traditional shipper that buys freight transportation services from railroads. Instead, SERR apparently owns a number of high-value, luxury, private passenger rail cars and seeks to move its owners in those passenger cars for private excursions on dedicated trains operated by freight rail carriers such as BNSF. We are not aware of any similarly situated MRL customers to Ms. Cohernour and Mr. Winters.

Second, SERR asserts that the proposed transaction would exclude certain historic customers from accessing the subject lines. In July 2022, SERR asked BNSF to confirm that BNSF would provide a special, dedicated locomotive and crew to move SERR’s luxury private cars with their personal passengers on board. Consistent with our long-standing policy, we

explained that we do not move private cars with passengers on board on our network and would be unable to accommodate SERR's request for a special passenger train excursion.

As a general rule, BNSF does not move private cars with passengers on board and has no obligation to provide such service. However, BNSF can move these private cars, unoccupied by passengers, as regular freight cars in manifest service. With such moves, we will permit a qualified person employed as a "mechanical rider" to ride on board the private cars to address any mechanical or safety issues, and we require a liability waiver. That waiver is similar to the language that Ms. Cohernour and Mr. Winters cite in their letter. This practice is consistent with other Class I railroads, and I understand that Amtrak uses similar language for persons riding on private cars.

BNSF is willing to move SERR's private cars, unoccupied by passengers, as regular freight cars in manifest service. Alternatively, Amtrak generally does allow private passenger cars to be attached to their trains, and BNSF and the other Class I railroads refer private car owners who wish to operate charter trips to Amtrak for such service. Therefore, SERR may wish to contact Amtrak to explore the possibility of charter service on Amtrak over BNSF lines.

BNSF looks forward to completing the proposed transaction and resuming the operation and maintenance of the lines as part of the BNSF network.

Sincerely,

A handwritten signature in cursive script that reads "Courtney B. Estes".

Courtney B. Estes

cc: Rose-Michele Nardi
Crystal M. Zorbaugh
Joe Racicot
Liz Cohernour
David Winters
All parties of record

CERTIFICATE OF SERVICE

I certify that I have, on December 29, 2022, served copies of this letter on all parties of record in this proceeding.

A handwritten signature in cursive script that reads "Sally Mordi".

Sally Mordi
Attorney for BNSF Railway Company