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April 13, 2018

Via Hand Delivery

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

RE: Docket No. AB-1264, *Kasgro Rail Corp.—Discontinuance of Service Exemption—In Lawrence County, PA*

To Whom It May Concern:

Enclosed for filing are an original and 10 copies of a Petition for Exemption being filed on behalf of Kasgro Rail Corp. pursuant to 49 U.S.C. § 10502 and 49 C.F.R. § 1152.60. Also enclosed is a check in the amount of \$7200.00 as the filing fee for this Petition.

This filing contains color images in Exhibit A.

Please time stamp the extra copy of the Petition provided herewith to indicate receipt of the foregoing and return via the same messenger delivering this filing.

Sincerely,

Jeff Moreno

Enclosures

FEE RECEIVED
April 13, 2018
SURFACE
TRANSPORTATION BOARD

Jeff.Moreno@ThompsonHine.com Fax: 202.331.8330 Phone: 202.263.4107

FILED
April 13, 2018
SURFACE
TRANSPORTATION BOARD

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Filing Contains Color Image

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1264

KASGRO RAIL CORP.
—DISCONTINUANCE OF SERVICE EXEMPTION—
IN LAWRENCE COUNTY, PA

PETITION FOR EXEMPTION

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Attorney for Kasgro Rail Corp.

Dated: April 13, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1264

KASGRO RAIL CORP.
—DISCONTINUANCE OF SERVICE EXEMPTION—
IN LAWRENCE COUNTY, PA

PETITION FOR EXEMPTION

Kasgro Rail Corp. (“Kasgro”), a Class III rail carrier, hereby petitions the Surface Transportation Board (“Board”) for an exemption, under 49 U.S.C. § 10502, from the provisions of 49 U.S.C. § 10903 to enable Kasgro to discontinue its lease operations over approximately four miles of rail line owned by EASX Corporation (“EASX”) in New Castle, Lawrence County, PA (the “Line”), as shown on the map attached hereto as Exhibit A. Through this Petition, Kasgro seeks to terminate its common carrier obligation to operate over the line. EASX retains a residual common carrier obligation to operate the Line.¹

BACKGROUND AND PROPOSED DISCONTINUANCE

The Line consists of three segments. The “New Castle Branch” begins at New Castle Branch Monumented Base Line (“MBL”), at Survey Station 10+00, opposite the former Pittsburgh and Lake Erie Railroad’s (“P&LE”) Main Line MBL Survey Station 2580+10, and extends in a generally northeasterly direction to the former P&LE Valuation Station 146+10. The “Big Run Branch” begins at P&LE New Castle Branch Baseline of Survey, at Survey Station 84+44, and extends in a generally southwesterly direction to a connection with CSX

¹ *Twin State R.R. Co.—Abandonment Exemption—In Caledonia and Essex Counties, VT*, STB Docket No. AB-862X (served Nov. 18, 2005) (“Generally, a railroad lessor retains a common carrier obligation, residual or otherwise, over the rail line its leases out.”).

Transportation, Inc. ("CSXT"). The "Sample Spur" begins at Valuation Station 2+00 off of CSXT's main line between Cumberland, MD and Willard, OH and continues in a generally northward direction to Valuation Station 40+75.7, where it connects with New Castle Industrial Railroad ("NCIR"), formerly known as ISS Rail, Inc.² The Line traverses United States Postal Zip Codes 16101 and 16102. The entire line is located within the New Castle station. Based upon inquiry of EASX and information in Kasgro's possession, the Line does not contain federally granted rights-of-way. Any documentation related thereto in the possession of Kasgro will be made available to those requesting it.

EASX purchased the New Castle and Big Run Branches, and leased the Sample Spur, from CSX Transportation, Inc. in Fin. Dkt. No. 32346, *EASX Corp., d/b/a EASX Railroad Corp.; Acquisition and Operation Exemption; The Three Rivers Ry. Co. and CSX Transp., Inc.* (ICC served Sept. 10, 1993). EASX subsequently purchased the Sample Spur in Fin. Dkt No. 32412, *EASX R.R. Corp.—Purchase and Operation Exemption—CSX Transportation, Inc., Line in Pennsylvania* (served Dec. 29, 1993). In both of the foregoing transactions, EASX informed the agency that a connecting Class III railroad, ISS Railroad, Inc. ("ISS"), would operate the Line. NCIR is the successor to ISS.

In June 2000, Kasgro acquired STB authority to lease the Line from EASX. STB Fin. Dkt. No. 33882, *Kasgro Rail Corp.—Lease and Operation Exemption—EASX Corp. and Rail Services Corp.* (Served June 22, 2000). The lease required Kasgro to continue to use ISS to operate the Line unless EASX consented to a change. NCIR, as the successor to ISS, continues to provide that service today. Although the initial term of the lease ended on May 3, 2010,

² On the map in Exhibit A, the Sample Spur and Big Run Branch are situated on the northwest side of the Shenango River. The New Castle Branch is situated on the southeast side of the River and consists of two physically separate segments which are connected operationally by the NCIR.

Kasgro and EASX have continued to perform in accordance with the lease terms on a month-to-month basis through the present. On April 3, 2018, Kasgro gave EASX written notice of its intent to exit the lease 30 days after the STB authorizes Kasgro to discontinue service. EASX will continue to have a residual common carrier obligation, which EASX will satisfy through the continuing operations of NCIR over the Line, which would not cause any change in service to shippers resulting from the discontinuance of Kasgro service.

EXEMPTION REQUEST

Kasgro requests an exemption under 49 U.S.C. § 10502 from the applicable requirements of 49 U.S.C. § 10903 to discontinue service over the Line. Pursuant to Section 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. § 10101; and, (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Congress intended the Board to liberally exercise its exemption authority to free transactions that satisfy these conditions from the administrative and financial costs associated with continued regulation:

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 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. U.S., 740 F.2d 1023 (D.C. Cir. 1984). Congress reaffirmed this policy in the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which reenacted the rail exemption provisions as Section 10502. H.R. Rep. 422, 104th Cong., 1st Sess. 168-69 (1995).

Unless this exemption is granted, Kasgro's discontinuance of service will be subject to 49 U.S.C. § 10903 and the Board's regulations implementing that section at 49 C.F.R. Part 1152. The Board has created a class exemption for certain abandonment and discontinuance transactions, and eligible transactions need not submit the extensive financial and operating data that otherwise would be required.³ 49 C.F.R. § 1152.50. Kasgro, however, does not qualify for that exemption because local traffic continues to move over the Line. Nevertheless, this transaction should be exempted from all the same regulatory requirements because it satisfies the standards in Section 10502.

A. Regulation Of This Transaction Is Not Necessary To Carry Out The Rail Transportation Policy.

Kasgro satisfies the first of two requirements for granting an exemption under Section 10502 because regulation of this transaction is not necessary to carry out the rail transportation policies in 49 U.S.C. § 10101. None of the rail transportation policies will be adversely affected by this transaction and, indeed, an exemption would promote several of those policies.

This transaction will not result in an abandonment of, or a cessation of service over, the Line. EASX, as the owner of the Line, will continue to have a residual common carrier obligation, which it will continue to fulfill through NCIR, which has been the contract operator of the Line, initially for EASX and subsequently for Kasgro, for the past 18 years.

³ See *Exemption of Rail Line Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C.2d 164, 165-66 (1987) ("The exemption process now relieves carriers from the need to prepare the costing and valuation studies that are required for Section 10903 abandonment applications. This saves the carriers considerable time and money and allows for expeditious regulatory relief.")

Consequently, the rail transportation policies pertaining to competition, a sound rail transportation system, public health and safety, working conditions, and energy conservation are not affected by this transaction. 49 U.S.C. § 10101(1), (3-6), (8-12) and (14).

As there will be no interruption in service, there is no need for the detailed operating and financial information otherwise required of abandonment or discontinuance transactions. An exemption, therefore, would minimize the unnecessary time and expense associated with the filing of a formal discontinuance application, expedite regulatory decisions, reduce regulatory barriers to exit, and minimize the burden of developing cost information in regulatory proceedings. 49 U.S.C. § 10101(2), (7), (13) and (15). *See, e.g.,* Docket No. AB-384 (Sub-No. 3X), *Delta Southern R.R., Inc.—Abandonment Exemption—In Desha and Chicot Counties, Ark.*, slip op. at 3 (served March 25, 2011). Indeed, where local service is not affected, the Board has determined that formal regulation of a proposed discontinuance is not necessary to carry out the rail transportation policy. *See* Docket No. AB-102 (Sub-No. 25X), *Missouri-Kansas-Texas R. Co.—Exemption—Discontinuance of Trackage Rights in Labette and Cherokee Counties, KS* (served Feb. 9, 1990).

B. This Transaction Is Of Limited Scope And Will Not Result In an Abuse Of Market Power.

Kasgro also satisfies the second of two requirements for granting an exemption. This second requirement, at 49 U.S.C. § 10502(a)(2), contains two alternative standards, *i.e.*, Kasgro need only satisfy one of them. Nevertheless, Kasgro satisfies both standards because this transaction is of limited scope and the application of Section 10903 to this transaction is not needed to protect shippers from the abuse of market power. 49 U.S.C. § 10502(a)(2)(A) and (B).

In determining whether a proposed transaction is of limited scope, the Board considers a variety of factors, such as the length of the rail line, the number of shippers on the line, and the

traffic volume. *See, e.g.,* Docket No. AB-346 (Sub-No. 1X), *Florida West Coast R.R. Co.—Abandonment Exemption—Gilchrist and Levy Counties, FL* (served Jan. 16, 1992); Docket No. AB-6 (Sub-No. 349X), *Burlington N. R.R. Co.—Abandonment Exemption—In Greene and Polk Counties, MO* (served Aug. 27, 1993). Kasgro seeks to discontinue service over just four miles of track in a single Pennsylvania county. There are only five shippers located on the Line and no overhead traffic.⁴ No shipper will lose service. NCIR will continue to provide the same service today as the contract operator for EASX, the owner of the Line, as it has for Kasgro during the time Kasgro has leased the Line from EASX and as it did for EASX prior to the Kasgro lease. Because the proposed discontinuance will not adversely affect rail service to any shipper, it is of limited scope.

Since the proposed discontinuance is of limited scope, there is no need to consider whether it is necessary to apply Section 10903 to protect shippers from abuse of market power. Nevertheless, the proposed discontinuance does not create any potential for abuse of market power because there will be no impact upon rail service over the line and the number of rail options will not be reduced. The only effect of the proposed transaction will be to shift Kasgro's current common carrier obligation, as a lessee of the Line, back to the lessor and owner of the Line, EASX, which will continue to fulfill the common carrier obligation through the same contract operator, NCIR. Because there will be an uninterrupted continuation of rail service, regulation is not needed to protect shippers from an abuse of market power. *See* Docket No. AB-566X, *Gateway Western R. Co.—Discontinuance of Service Exemption—In Jackson County, MO*, slip op. at 2 (served July 21, 2000) ("Because service is being continued by the owner of the line, regulation is not necessary to protect shippers from the abuse of market power."); Docket

⁴ Exhibit A identifies these five shippers and their locations on the Line.

No. AB-998X, *Timber Rock R.R., Inc.—Discontinuance of Service Exemption—In Burleson, Brazos, Grimes, Montgomery, Liberty, Hardin and Jefferson Counties, TX*, slip op. at 2-3 (served Jan. 25, 2007).

**ENVIRONMENTAL AND HISTORIC REPORTING REQUIREMENTS
AND
PUBLIC AND TRAIL USE CONDITIONS**

The Board routinely has determined that discontinuance proceedings are exempt from environmental and historic reporting requirements, interim trail use/rail banking, and public use conditions. *See, e.g.*, Docket No. AB-290 (Sub-No. 370X), *Norfolk S. Ry. Co.—Discontinuance of Service Exemption—In Clermont, Brown, and Adams Counties, OH* (served Jan. 15, 2015); Docket No. AB-933 (Sub-No. 1X), *Dakota, Missouri Valley and Western R.R., Inc.—Discontinuance of Service Exemption—In Burke County, ND* (served Dec. 17, 2014); Docket No. AB-1108X, *Blacklands R.R., Inc.—Discontinuance Exemption—In Rusk County, TX* (served April 3, 2013); Docket No. AB-55 (Sub-No. 725X), *CSX Transp., Inc.—Discontinuance of Service Exemption—In Raleigh County, WV* (served Sept. 11, 2012); Docket No. AB-1011 (Sub-No. 1X), *Northern Lines Ry., LLC—Discontinuance of Service Exemption—In Stearns County, MN*, slip op. at 2 (served May 20, 2011); Docket No. AB-290 (Sub-No. 307X), *Norfolk S. Ry. Co.—Discontinuance of Service Exemption—In St. Jos. and LaPorte Counties, IN* (served June 18, 2008). This is particularly true where rail service will continue over the rail line.

FEDERAL REGISTER NOTICE

Pursuant to 49 C.F.R. § 1152.60(c), Kasgro has attached a draft Federal Register notice of this Petition as Exhibit B. The form of notice has been modified to reflect that this proceeding involves a discontinuance and not an abandonment.

CERTIFICATE OF SERVICE AND PUBLICATION

Kasgro has attached as Exhibit C a verified certificate of compliance with the newspaper publication requirements in 49 C.F.R. § 1105.12.

Kasgro has attached as Exhibit D a certificate of service certifying that this Petition has been served upon the persons designated in 49 C.F.R. § 1152.50(d).

LABOR PROTECTION

The interests of any railroad employees of Kasgro who may be adversely affected by the proposed discontinuance of service will be adequately protected by the labor protective conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

CONCLUSION

For the foregoing reasons, Kasgro submits that the proposed discontinuance of service transaction fulfills all the requirements for an exemption under 49 U.S.C. § 10502, and therefore, respectfully requests that the Board grant this Petition.

Respectfully submitted,

Kasgro Railroad Corp.

By its attorney,



Jeffrey O. Moreno
Thompson Hine LLP
1919 M Street, N.W.
Suite 700
Washington, DC 20036-1601
(202) 331-8800

Dated: April 13, 2018

EXHIBIT A

MAP

1. KASGRO Rail Corp.
2. Tanner Industries
3. R.W. Elliott Holdings
4. New Castle Recycling
5. PSC Metals
6. Consolidated Containers

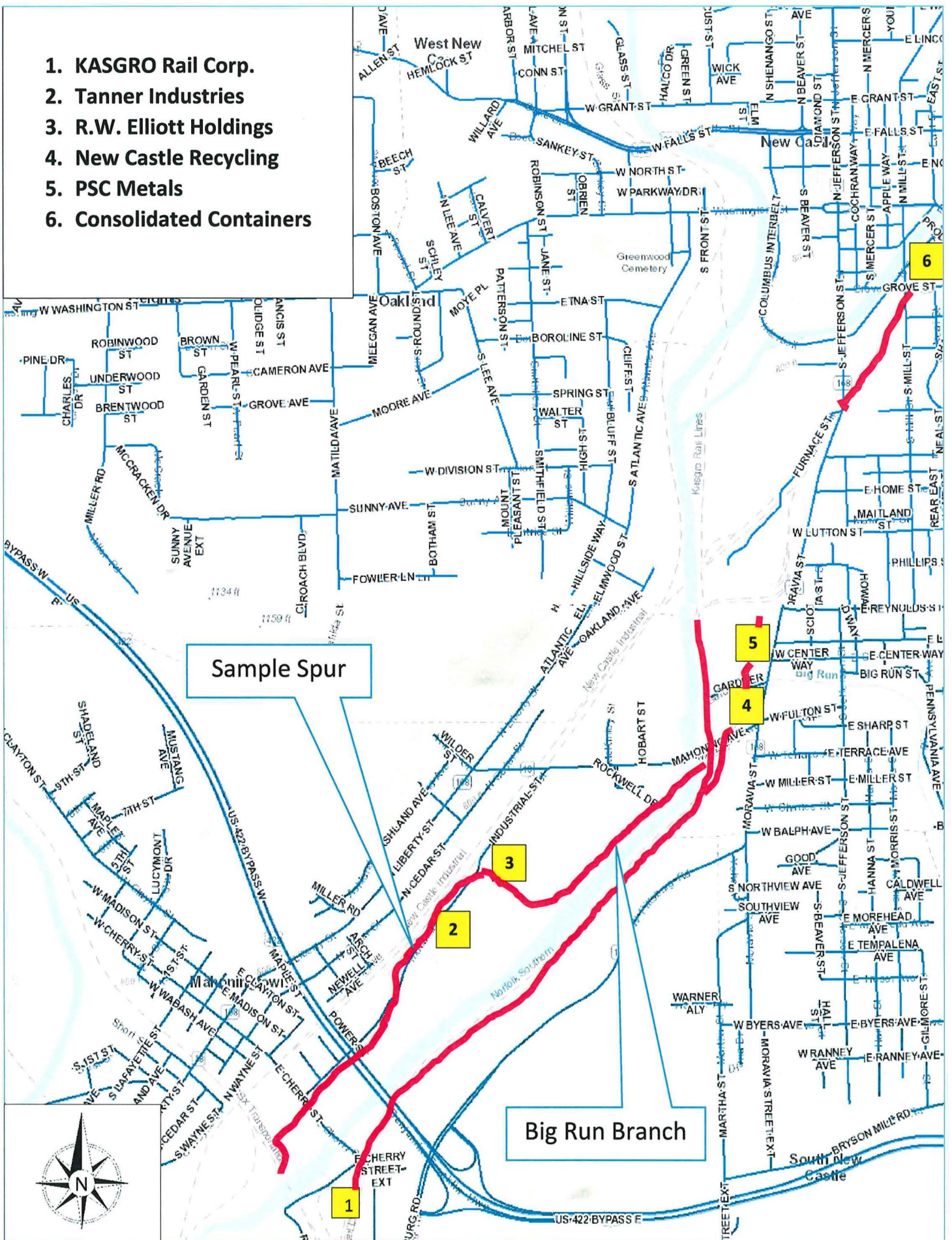


EXHIBIT B

CAPTION SUMMARY

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-1264

KASGRO RAIL CORP.
—DISCONTINUANCE OF SERVICE EXEMPTION—
IN LAWRENCE COUNTY, PA

Notice of Petition for Exemption to Discontinue Service

On April 13, 2018, Kasgro Rail Corp. (“Kasgro”), a Class III rail carrier, filed with the Surface Transportation Board, Washington, DC 20423, a petition for exemption for the discontinuance of service over an approximately four mile line of railroad in New Castle, Lawrence County, PA (the Line). There are no mileposts on the Line which is located entirely within the New Castle station. The Line is located entirely within United States Postal Service ZIP Codes 16101 and 16102.

Kasgro does not own the Line. Kasgro states that, to its knowledge, the Line does not contain federally granted rights-of-way. Any documentation in Kasgro’s possession 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 R. Co.—Abandonment—Goshen*, 360 ICC 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 USC §10502(b). A final decision will be issued no later than July 12, 2018 (90 days after filing).

Any offer of financial assistance (OFA) under 49 CFR §1152.27(b)(2) to subsidize continued rail service will be due not later than 10 days after service of a decision granting the

petition for exemption. Each OFA to subsidize continued rail service must be accompanied by the required filing fee, which is currently set at \$1,800. See 49 CFR §1002.2(f)(25).

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

All filings in response to this notice must refer to STB Docket No. AB-1264 and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001, and (2) Jeffrey O. Moreno, 1919 M Street, N.W., Suite 700, Washington, DC 20036. Replies to the petition are due on or before _____.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Congressional and Public Services at (202) 245-0238, or refer to the full discontinuance regulations at 49 CFR Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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

Decided: _____

EXHIBIT C

CERTIFICATE OF PUBLICATION

Certificate of Publication

The undersigned hereby certifies that the attached notice of the proposed discontinuance of service in the foregoing Petition for Exemption in Docket No. AB-1264, *Kasgro Rail Corp.—Discontinuance Of Service Exemption—In Lawrence County, PA*, was advertised on April 10, 2018, in the New Castle News, a newspaper of general circulation in Lawrence County, PA, as required by 49 C.F.R. § 1105.12.



Jeffrey A. Plut
April 12, 2018

**NOTICE OF INTENT TO DIS-
CONTINUE RAIL SERVICE**

Kasgro Rail Corp. (Kasgro) gives notice that on or about April 13, 2018 it intends to file with the Surface Transportation Board, Washington, DC, a petition for exemption under 49 USC 10502 from the prior approval requirements of 49 USC 10903, et seq., permitting the discontinuance of service on an approximately four mile line of railroad in Lawrence County, PA which does not have any mileposts, is located entirely within the New Castle station, and traverses through United States Postal Service ZIP Codes 16101 and 16102. The proceeding has been docketed as No. AB-1264. Upon the discontinuance of service by Kasgro, rail service over the Line will continue to be provided by the owner of the Line, EASX Corp.

Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6 and 1105.8.

Appropriate offers of financial assistance to continue rail service through subsidy can be filed with the Board.

An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance) must be filed directly with the Board's Office of Proceedings, Washington, DC [See 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on Kasgro's representative [See 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance may be directed to the Board'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 Kasgro's representative, Jeffrey O. Moreno, Thompson Hine LLP, 1919 M Street, NW, Suite 700, Washington, DC 20036.

Legal: April 10, 17, 2018

EXHIBIT D

CERTIFICATE OF SERVICE

Certificate of Service

Pursuant to 49 C.F.R. § 1152.60(d), the undersigned hereby certifies that the foregoing Petition for Exemption in Docket No. AB-1264, *Kasgro Rail Corp.—Discontinuance Of Service Exemption—In Lawrence County, PA*, was served via first class mail, postage prepaid, on April 13, 2018, to the following persons:

Pennsylvania Department of Transportation
Bureau of Rail Freight, Port & Waterways
Keystone Building, 400 North Street
P.O. Box 3151
Harrisburg, PA 17105-3151

Pennsylvania Public Utility Commission
Keystone Building, 400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

U.S. Department of the Army
Military Surface Deployment & Distribution
Command Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Building 1900W
Scott AFB, IL 62225-5006

U.S. Department of the Interior
National Park Service
Rivers, Trails & Conservation Assistance Program
1849 C Street, N.W.
Washington, DC 20240

U.S. Department of Agricultural
Chief of the Forest Service
1400 Independence Avenue, S.W.
Washington, DC 20250



Jeffrey O. Moreno