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THOMAS F. MCFARLAND

April 22, 2019

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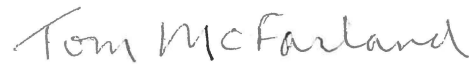
Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: STB Docket No. AB-1269X, *Iowa Traction Railway Company -- Abandonment
Exemption -- in Cerro Gordo County, IA*

Dear Ms. Brown:

Hereby transmitted is a Supplement To Verified Notice Of Exemption Under 49 C.F.R. §
1152.50 for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland
Attorney for Applicant

TMcF:mg:enc:1811\ltrSTB3

cc: By e-mail and first-class, U.S. mail

Ms. Andrea Boulton
Iowa Natural Heritage Foundation
505 Fifth Avenue Insurance Exchange Building
Suite 444
Des Moines, IA 50309
lhein@inhf.org

Mr. Aaron Burnett
City of Mason City, IA
City Administrator
10 First Street Northwest
Mason City, IA 50401-3224
aburnett@masoncity.net

BEFORE THE
SURFACE TRANSPORTATION BOARD

IOWA TRACTION RAILWAY	)	
COMPANY -- ABANDONMENT	)	DOCKET NO. AB-1269X
EXEMPTION -- IN CERRO GORDO	)	
COUNTY, IA	)	

**SUPPLEMENT TO VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1152.50**

IOWA TRACTION RAILWAY COMPANY
12045 West State Street
Mason City, IA 50401

Applicant

THOMAS F. McFARLAND
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Attorney for Applicant

DATE FILED: April 22, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

IOWA TRACTION RAILWAY	)	
COMPANY -- ABANDONMENT	)	DOCKET NO. AB-1269X
EXEMPTION -- IN CERRO GORDO	)	
COUNTY, IA	)	

**SUPPLEMENT TO VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1152.50**

Pursuant to the Board's decision served April 11, 2019, Iowa Traction Railway Company (Iowa Railway) hereby files this Supplement to its Verified Notice of Exemption under 49 C.F.R. § 1152.50, filed on February 25, 2019.

THE BOARD'S DECISION SERVED APRIL 11, 2019

The Board stated that it is not clear whether Iowa Railway obtained the Board's approval to acquire the subject rail line from Backtrack, Inc. (Backtrack) (at 1). The Board said that absent evidence that the Board approved that acquisition, Iowa Railway's verified notice of exemption cannot proceed, citing *Iowa NW. R.R. -- Aban. Exemption -- in Osceola & Dickinson Ctys., IA*, Docket No. AB-1067 (Sub-No. 1X), decision served April 10, 2006, at *2-3.

Iowa Railway was directed to file supplemental information by April 25, 2019, to explain how it acquired the line and whether it obtained the Board's authority to do so. (decision served April 11, 2019 at 1-2). The Board ordered that the exemption for abandonment of the line will not become effective until further order of the Board (*id* at 2).

RESPONSE TO THE BOARD'S ORDER

Iowa Railway acquired the subject rail line from a noncarrier, Backtrack, shortly before Iowa Railway filed its verified notice of exemption for abandonment. The acquisition was not filed with the Board for approval under the circumstances explained below.

CIRCUMSTANCES SURROUNDING FAILURE TO SEEK BOARD APPROVAL FOR IOWA RAILWAY'S ACQUISITION OF THE LINE FROM BACKTRACK

The subject rail line has not been operated in more than 30 years. As a result, it is heavily overgrown with brush and weeds. In its present condition, it is a wholly unproductive asset.

The City of Mason City, Iowa (the City) expressed interest to Backtrack in acquiring the right-of-way (ROW) of the rail line for railbanking and interim recreational trail use under the National Trails System Act (NTSA), 16 U.S.C. § 1247(d). The City recently acquired a ROW that is adjacent to the subject rail line from Union Pacific Railroad Company (UP) for railbanking and trail use under NTSA. *See Union Pacific R. Co. -- Aban. Exempt. -- in Cerro Gordo County, IA*, Docket No. AB-33 (Sub-No. 327X), Joint Notice of Trail Use - Railbanking Agreement, dated February 28, 2019.

The owner of the rail line, Backtrack, very much welcomed the City's expression of interest in the ROW for railbanking and trail use because that would transform a wholly unproductive asset to a productive use. However, there was an obstacle regarding that transformation. In order to obtain the benefits of railbanking-trail use under NTSA, such as no reversion of non-fee parcels, the ROW must first be authorized or exempted for abandonment upon application or petition by a Board-authorized rail carrier. UP satisfied that requirement in

regard to the ROW that is adjacent to the subject rail line. However, Backtrack, as a noncarrier, did not satisfy that requirement.

The recent conveyance of the subject rail line from Backtrack to Iowa Railway was motivated by the resulting ability of Iowa Railway, as an authorized rail carrier, to obtain approval of abandonment of the line, after which it could convey the ROW of the line to the City for railbanking and interim recreational trail use under NTSA. It made sense for the rail line to be conveyed to Iowa Railway because Iowa Railway was already authorized to operate the rail line (although it never did so) so that the conveyance unified ownership and operation of the line in Iowa Railway.

In furtherance of railbanking and trail use of the ROW of the subject rail line, the City filed a request for an NITU on February 28, 2019, and Iowa Railway filed a statement dated March 1, 2019 in which it agreed to negotiate with the City for railbanking and interim trail use of the ROW under NTSA.

The Board's decision served April 11, 2019 prevents the exemption for abandonment of the line from going forward until further order of the Board. That also precludes railbanking and trail use from going forward until further Board order.

SUGGESTED PROCEDURE GOING FORWARD

Conveyance of the rail line from Backtrack to Iowa Railway required Board approval. Iowa Railway hereby undertakes to obtain the required approval. The procedure that Iowa Railway is respectfully requesting going forward is designed to minimize the delay before the ROW can be railbanked and used as a recreational trail. Delay of trail use of the ROW would not be in the public interest because trail use would transform the ROW from nonproductive to

productive use, and because trail use is strongly supported by the City of Mason City, Backtrack, and Iowa Railway, and has not been opposed by any party.

The Board is respectfully requested to hold the proposed exemption for abandonment in abeyance while Iowa Railway seeks Board approval for its acquisition of the rail line from Backtrack. No good purpose would be served by requiring Iowa Railway to go through the abandonment process again. Such a requirement would materially delay trail use of the ROW contrary to the interests of all parties.

The Board is respectfully requested to permit Iowa Railway to utilize class exemption procedure (notice of exemption) instead of petition-for-exemption procedure or to grant an exemption from petition for exemption procedure on its own motion. While the Board's general policy is to require a class exemption applicant to have owned a rail line for at least two years before filing a notice of exemption, here the rail line has been out of service not only for two years, but for more than 30 years. That inactivity more than satisfies the purpose of the policy that recently active rail lines not be processed under accelerated class exemption procedure. *See, e.g., BNSF Ry. Co. -- Aband. Exempt. -- in Oklahoma County, OK*, 2007 WL 201200 at *4 (Docket No. AB-6 [Sub-No. 430X], decision served January 26, 2007 (on its own motion, Board granted an individual exemption for discontinuance of service where length of inactivity on the rail line indicated the absence of need for rail service)).

CONCLUSION AND REQUESTED RELIEF

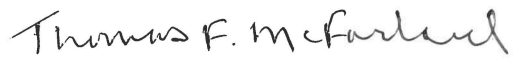
WHEREFORE, for the reasons stated, the Board is respectfully requested to accept this Supplement for filing, and, on review of the foregoing, the Board is respectfully requested to

adopt the Suggested Procedure Going Forward. Expedited disposition of the requested procedure is respectfully requested.

Respectfully submitted,

IOWA TRACTION RAILWAY COMPANY
12045 West State Street
Mason City, IA 50401

Applicant

A handwritten signature in cursive script that reads "Thomas F. McFarland".

THOMAS F. McFARLAND
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Attorney for Applicant

DATE FILED: April 22, 2019

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2019, I served the foregoing Supplement To Verified Notice Of Exemption Under 49 C.F.R. § 1152.50 by e-mail and first-class, U.S. mail, postage prepaid on Ms. Andrea Boulton at *lhein@inhf.org*, 505 Fifth Avenue Insurance Exchange Building, Suite 444, Des Moines, Iowa 50309 and by e-mail and first-class, U.S. mail, postage prepaid on Mr. Aaron Burnett at *aburnett@masoncity.net*, 10 First Street Northwest, Mason City, Iowa 50401-3224.



Thomas F. McFarland