



THE FOUNDRY BUILDING

1055 THOMAS JEFFERSON STREET NW SUITE 500 WASHINGTON, DC 20007
TELEPHONE: 202/342-5200 FACSIMILE: 202/342-5219

242799

ENTERED
Office of Proceedings
March 14, 2017
Part of
Public Record

RICHARD BAR
BRENDAN COLLINS
STEVEN JOHN FELLMAN
EDWARD D. GREENBERG
KATHARINE FOSTER MEYER
DAVID K. MONROE
TROY A. ROLF
DAVID P. STREET
KEITH G. SWIRSKY
THOMAS W. WILCOX
CHRISTOPHER B. YOUNGER

SVETLANA B. LYUBCHENKO

MINNESOTA OFFICE:
700 TWELVE OAKS CENTER DRIVE, SUITE 204
WAYZATA, MN 55391
(T) 952/449-8817 (F) 952/449-0614

WRITER'S DIRECT E-MAIL ADDRESS
TWILCOX@GKGLAW.COM

WRITER'S DIRECT DIAL NUMBER
202-342-5248

March 14, 2017

By Hand Delivery

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



Re: Docket No. AB 1250 (Sub-No. 1X), *HC Railroad, LLC - Abandonment Exemption - In Rush County, Indiana*

Dear Ms. Brown:

Accompanying this letter for filing in the referenced docket is the original and ten (10) copies of a Petition for Exemption filed on behalf of HC Railroad, LLC. An additional copy is enclosed for stamping and return to our office. Also enclosed is the required filing fee of \$6,900.

Do not hesitate to contact the undersigned with any questions or if you need additional information.

Sincerely,

Thomas W. Wilcox
Attorney for HC Railroad, LLC

cc: Robert Barrett, Esq.

FEE RECEIVED
March 14, 2017
SURFACE
TRANSPORTATION BOARD

FILED
March 14, 2017
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB 1250 (Sub-No. 1X)

**HC RAILROAD, LLC - ABANDONMENT EXEMPTION -
IN RUSH COUNTY, INDIANA**

PETITION FOR EXEMPTION

Pursuant to 49 U.S.C. §10502 and rules applicable thereto at 49 C.F.R. §1121 and §1152.60, HC Railroad, LLC (“HC Railroad”), an indirect subsidiary of Bunge North America, Inc. (“BNA”), and a Class III common carrier by railroad, files this petition (“Petition”) seeking an exemption from the provisions of 49 U.S.C. §10903 to abandon its common carrier service obligation over a 6.4 mile line of railroad it owns in Rush County, Indiana. The line in question extends from milepost 17.4 to milepost 23.8, shown on the map attached hereto as Exhibit A, and is referred to herein as the “Line.” HC Railroad has no paid employees and no railroad equipment, is not responsible for maintaining the Line, and has never conducted any operations—common carrier or otherwise—over the Line.¹ Rather, when HC Railroad acquired the Line, it immediately and exclusively leased the track to the only shipper located along the line – who is an

¹ Because no local common carrier operations have occurred over the Line in over 6 years, there is no overhead traffic on the line, and there are no pending formal complaints from a user of rail service on the line, HC Railroad originally sought authority to abandon its common carrier obligation through a Notice of Exemption filed pursuant to 49 C.F.R. §1152.50 on January 23, 2017 in Docket No. AB 1250 (Sub-No. 0X). Nevertheless, this Notice of Exemption was withdrawn by HC Railroad on February 27, 2017 after discussions with Board staff.

indirect affiliate of HC Railroad - for use as an industry track to move railcars used in the shipper's grain elevator operations.

Although the Line will be abandoned for purposes of terminating Surface Transportation Board jurisdiction over it, HC Railroad intends to leave the track in place for continued access and use by its affiliate, and for access and use by any hypothetical future industries that might construct facilities along the Line and desire rail service, pursuant to private contractual arrangements with HC Railroad and third parties for access to and use of the tracks. For these reasons, HC Railroad is also seeking an exemption from the Offer of Financial Assistance provisions of 49 U.S.C. §10904 and the public use provisions of 49 U.S.C. §10905.

The Line traverses United States Postal Service Zip Code 46173. Based on the information in HC Railroad's possession, the Line does not contain any federally granted right-of-way. Any documentation in HC Railroad's possession concerning the Line will be made available promptly to those requesting it.

FACTUAL BACKGROUND

HC Railroad acquired the Line from the Honey Creek Railroad, Inc. ("Honey Creek") in 2010. STB Finance Docket No. 35434, *HC Railroad LLC – Acquisition and Operation Exemption –Honey Creek Railroad, Inc.* (Decision served October 28, 2010). Previously, Honey Creek had used the Line to provide rail service to only one shipper, Morristown Grain Company, Inc. ("Morristown"), whose grain handling facility is located at the end of the Line at MP 17.4. Contemporaneous with the acquisition of the Line by HC Railroad, its indirect parent company, BNA also acquired Morristown (via another company). Accordingly, HC Railroad and Morristown are indirect affiliates.

In addition to acquiring the Line in 2010, HC Railroad also acquired from Honey Creek its rights to own and/or operate approximately 1400 feet of private industrial tracks owned by it and CSX Transportation, Inc. ("CSXT") that connect the southern end of the Line at approximately MP 23.8 to a point of interchange with the main line of CSXT in the vicinity of Rushville, Indiana ("Connecting Track"). The Connecting Track, which is not part of the Line, was previously used by Honey Creek and CSXT to interchange empty and loaded railcars destined to and received from, respectively, Morristown's grain facility.

Immediately upon acquiring the Line, HC Railroad entered into a Railway Track Agreement with Morristown by which Morristown leased the entire Line for its exclusive use as an industrial track for the rail operations associated with Morristown's grain business. A copy of this agreement is attached as Exhibit B. Specifically, Morristown was granted access to the Line 24 hours a day, seven days per week:

in order to use said Industrial Track for the movement of locomotives and railcars, storage of locomotives and railcars and the loading or unloading of railcars as desired by Lessee solely in connection with its primary non-Lessor business of operating its grain elevator. Lessee may not use the Industrial Track to serve any other industry, and no such industry is located on the Industrial Track.

Railway Track Agreement, Exhibit B, Section 2.

Accordingly, although HC Railroad technically retained the common carrier obligation it received from Honey Creek, it chose to not conduct any common carrier operations over the Line and instead leased the track to its affiliate, Morristown, for use solely as an industry track for Morristown's grain elevator business. Moreover, Morristown was expressly prohibited from holding itself out to provide service to any other shipper (and no other shippers were present in any event). Since this language

evidenced that there was no intent to convey the common carrier obligation to Morristown, no authority from the Board was required or sought by HC Railroad in conjunction with the Railway Track Agreement lease and Morristown's limited use of the Line as an industrial track.

Between 2010 and 2015, CSXT placed and removed railcars shuttled by Morristown between its grain facility and the Connecting track over the Line using its own locomotives and personnel. Morristown also assumed responsibility for maintaining the Line and the Connecting Track. In 2015, Morristown and CSXT modified their arrangement for handling Morristown's railcars. Specifically, Morristown (through its indirect parent company BNA) entered into a "Locomotive Trip Lease (Unit Train Loading)" agreement with CSXT ("CSXT Agreement"). Pursuant to the CSXT Agreement – to which HC Railroad is not a party - CSXT crews now deliver 90-car unit trains of hopper cars in private carriage to (empty) and from (loaded) Morristown's grain facility over the Line.² Morristown, through BNA, continues to maintain the leased Line and Connecting Track.

Morristown receives the complete trains, including the CSXT locomotives, onto the leased Line and Morristown's grain facility property and loads them at the facility within a contractually agreed upon time, subject to mutually agreed contract charges if it exceeds that time. CSXT then picks up the loaded trains at the facility and takes them back across the Line to the interchange with CSXT's main line track at Rushville. The CSXT Agreement specifically precludes Morristown from using CSXT's locomotives

² See, e.g., Docket No. AB 1182X, *Brandon Railroad, L.L.C. – Abandonment Exemption – In Douglas County, Nebraska* (served May 25, 2016)(where third party utilized a rail line for private carriage for rail cars moving to and from its repair facilities without requiring STB authority).

and related equipment for any other purpose. CSXT has not been granted any rights from HC Railroad to provide any common carrier service to Morristown, or any shipper that might locate on the Line in the future. The CSXT Agreement is solely for the purpose of the private carriage of empty and loaded trains on and off Morristown's property, which property includes the Line for the term of the Railway Track Agreement lease.

The rates, terms and conditions governing CSXT's transportation of grain processed by Morristown over CSXT's system to CSXT's customers are established through arrangements between those parties. Morristown does not have any rail transportation agreements or tariff's arrangements with CSXT to transport grain from the facility.

As explained in the verified statement of Mr. Todd Bastean, President of both Morristown and BNA. ("Bastean V.S."), attached hereto as Exhibit C, Morristown has no objection to the proposed abandonment of HC Railroad's common carrier obligation and conversion of the Line into a private track. Bastean V.S. at 1. Morristown is satisfied with the Railway Track Agreement with HC Railroad and the locomotive use agreement with CSXT. *Id.* at 2. Morristown fully expects both of these agreements to remain in place for the indefinite future. In the unlikely event either or both of the agreements are terminated, Morristown is confident that it will continue to have access to its affiliate's track for the movement of its cars to and from the Connecting Track and CSXT's main line. *Id.* Morristown therefore does not desire nor need any common carrier service from HC Railroad. *Id.* at 1.

There were no other rail shippers located along the Line when HC Railroad acquired it in 2010, and none have located there since. Nor are there any concrete plans

for any industries to locate along the line and request rail service in the immediate future. In early 2016, representatives of BNA received correspondence from the Mayor of the City of Rushville that raised the possibility of someday developing an industrial park in the vicinity of the Line. However, there are currently no actual development plans or specific proposed tenants for such an industrial park, let alone any projected need for or volumes of rail traffic. The Board has consistently declined to factor into its consideration of abandonment petitions for exemption such speculative future service needs. STB Docket No. AB-364 (Sub-No. 14X), *Mid-Michigan RR, Inc. – Abandonment Exemption – in Kent, Ionia, and Montcalm Counties, MI*, (served September 26, 2008); and STB Docket No. AB-290 (Sub-No. 293X) *Norfolk Southern Railway Co. – Abandonment Exemption – In Norfolk and Virginia Beach VA* (STB served December 2007). The possibility raised by City of Rushville is similarly too speculative to be factored into the Board’s consideration of this Petition. In any event, however, BNA and HC Railroad representatives have discussed with the Mayor’s office that should any industry development actually occur at this location someday, and any need for rail service emerge (as opposed to new facilities using truck transportation), HC Railroad and BNA would work with the relevant parties to facilitate their use of the Line as an industrial track similar to Morristown’s current use. Such use could entail the party using its own equipment to shuttle cars to the CSXT interchange, or making arrangements for a third party to perform this service. HC Railroad would not contemplate providing such service, since it owns no railroad equipment and does not have any paid employees. The City supports this approach and therefore does not object to HC Railroad’s request to abandon its common carrier obligation for purposes of removing the line from the

Board's jurisdiction. A copy of this Petition is being served on the Mayor's office to keep them informed of this proceeding.

MAP AND EXHIBITS

A map of the Line is attached as Exhibit A. A draft Federal Register notice is attached as Exhibit D. Certifications of compliance with 49 C.F.R. §1105.12 and §1152.60(d) are included as Exhibit E. Finally, Exhibit F consists of a verification of the facts stated herein.

PETITIONER'S REPRESENTATIVE

HC Railroad is represented by Thomas W. Wilcox of GKG Law, P.C., 1055 Thomas Jefferson Street, Suite 500, Washington, D.C. 20007. Mr. Wilcox can be reached at telephone (202) 342-5248, facsimile (202) 342-5222; and email: twilcox@gkglaw.com.

THE EXEMPTION STANDARDS HAVE BEEN MET

The requested exemption should be granted because in keeping with the standards of §10502 – (a) application of the Board's formal abandonment process is unnecessary to carry out the Rail Transportation Policy ("RTP") of 49 U.S.C. §10502; (b) the proposed action is of limited scope; and (c) regulation is not necessary to protect any shippers on the Line from market power abuse.

A. Regulation is Not Necessary to Carry out the Rail Transportation Policy

Detailed scrutiny of this transaction is not necessary to carry out the RTP. In this case, no common carrier rail service has ever been provided over this 6.4 mile line by HC Railroad due to the existence of the Railway Track Agreement lease between it and Morristown and the lack of any other shippers located along the line. There is thus no

need or desire for common carrier rail service over this particular line of railroad. Moreover, Morristown has stated it is content with continuing to exclusively lease the Line and maintain it for use in its grain operations. This arrangement between corporate affiliates involves less of a need or use for actual railroad service over a line than the Board has found acceptable in other petition for exemption cases. For example, in STB FD No. 32908, *Ormet Railroad Corporation – Exemption from 49 U.S.C. Subtitle IV* (served October 16, 1996), the Board granted a short line railroad corporation's request to be exempted from its common carrier obligation where service to its two affiliate companies was being provided pursuant to contractual arrangements with Conrail. In that case, despite the fact that Conrail had previously provided rail service over the line, and continued to do so after the sale to Ormet, the Board permitted the line to be treated as a private track because the affiliates "require only contract service, have expressed no need for common carrier service, and have voiced no objection to Conrail's offering service only under contract." *Id.* at 2. This petition by HC Railroad is even more clear since granting it would simply continue the use of the track as an industrial track by a single affiliated shipper, which has entered into a separate agreement with CSXT solely for the purpose of shuttling unit trains to and from its grain facility.

Permitting HC Railroad to abandon its common carrier obligation would also not result in harm to any other shipper or community interests, as there are no other current rail shipper facilities located along the line, and the presence of any other rail shippers locating along the Line in the future is "speculative at best." Docket No. AB-33 (Sub-No. 170), *Union Pacific Railroad Company – Abandonment – In Polk County, Iowa* (served January 16, 2002) 2002 WL 58005 at *4. Moreover, the proponents of potential

future rail service do not object to any such future access to the Line being provided through private contract arrangements. The circumstances of this proposed abandonment therefore differ sharply from those in Docket AB 1128X, *Energy Solutions, LLC, DBA Heritage Railroad Corporation – Abandonment Exemption – In Anderson and Roan Counties, Tenn.* (served October 13, 2015). In that case, the Board denied a petition for exemption from §10903 (1) where the petitioner was an operating short line railroad, (2) there were no fewer than *five* existing and active shippers on the line that was proposed to be abandoned, and (3) there is no indication in that decision that any of the five shippers concurred with the short line's proposal to extinguish its common carrier obligation. Thus, the Board was rightfully concerned under those specific circumstances that the railroad could end service to the shippers without Board authorization. Here, however, HC Railroad has never operated over the Line, there is only one shipper and it receives no common carrier service from HC Railroad, and the shipper is content with continuing the status quo concerning its access to (and maintenance of) the Line pursuant to its lease agreement with HC Railroad, and the movement of unit trains to and from its facility pursuant to its agreement with its CSXT. For the reasons stated previously, the speculative nature of any other traffic on the Line makes this case easily distinguishable from the few instances where the Board has denied a petition for exemption from §10903 because of the possibility of new traffic being added in the future. *See, e.g.,* Docket No. AB-307 (Sub-No. 5X), *Wyoming and Colorado RR Co., Inc. – Abandonment Exemption – In Carbon County, Wy.* (Served November 10, 2004)(where, unlike here where no other physical facilities are present, there was an existing facility that previously used rail service and strong evidence that it was restarting its operations and adding traffic to the

line).

Under these circumstances, granting this requested exemption would minimize Federal regulatory control and the unnecessary expenses associated with the preparation and filing of a formal abandonment application, expedite regulatory decisions, and reduce regulatory barriers to exit from the industry. 49 U.S.C. §10101(2) and (7). It would also provide for the expeditious handling and resolution of this proceeding. *Id.* at §10101(15).

Moreover, since the tracks making up the Line will remain in place and the current rail service to the only shipper presently located along the Line will not be affected in any way, the proposed abandonment will result in the continued operation of transportation facilities and equipment without detriment to the public health and safety. *Id.* at 10101(8). Also, since HC Railroad will leave the line in place for other shippers to potentially access and use it pursuant to agreements with HC Railroad should any locate along the line in the future, the abandonment of HC Railroad's common carrier obligation under these circumstances will also encourage the honest and efficient management of railroads. *Id.* at §10101(9). Further, the current arrangement between Morristown and CSXT is a much more efficient way for Morristown to receive and process 90-car unit trains than if HC Railroad was involved in the movement, and trying to maintain the economic viability of the Line. HC Railroad currently incurs no significant costs to own the Line since it is maintained by Morristown, through BNA, pursuant to the Railway Track Agreement and CSXT Agreement. The only revenues HC Railroad presently derives are a nominal annual lease payment from Morristown. Changing the status quo by requiring HC Railroad to commence common carrier operations over the Line would dramatically increase HC Railroad's costs and introduce inefficiencies into the overall

service to Morristown. HC Railroad believes that this would quickly result in the Line becoming a burden on interstate commerce in that the high costs it incurred would not be covered by additional revenues it would have to seek from Morristown. This would adversely affect the current efficient use of the Line by Morristown and CSXT. Consequently, permitting HC Railroad to abandon its common carrier obligation and continue the status quo of this 6.4 mile line of rail being used as an industrial track would advance the policies of §10101(4) and (5) by ensuring the continuation of a sound transportation system to meet the needs of the public, and foster sound economic conditions in transportation, respectively. This is particularly true because unlike the shippers in *Energy Solutions*, *supra*, Morristown has stated it does not object to HC Railroad's abandonment request for the purpose of extinguishing its common carrier obligation.

B. The Transaction is of Limited Scope

This transaction is clearly of limited scope. The track in question is only 6.4 miles long and no common carrier railroad service has been provided over it since 2010. Rather, it has been used as an industrial track by Morristown Line pursuant to its Railway Track Agreement with HC Railroad. As explained above, there will be no changes whatsoever in Morristown's business operations as a result of the abandonment of HC Railroad's common carrier obligation. The presence of other rail shippers eventually locating along the Line is highly speculative, and in any case the governmental entity that supports the only potential future shipping interests concurs with HC Railroad's efforts to extinguish its common carrier obligation associated with the Line.

C. Regulation of this Abandonment is not Necessary to Protect Shippers from Market Power Abuse

Nor is there any need to protect any shipper from market power abuse. The only shipper that has been located on the Line since HC Railroad acquired it is HC Railroad's affiliate Morristown and Morristown's rail service and business operations will continue without change. *See Ormet, supra*, at 2 (where fact that short line was affiliated with the only two shippers on the line was a factor in finding no need to protect shippers from market power abuse).

D. Exemption from 49 U.S.C. §10904 and 10905 is Also Justified and Appropriate

HC Railroad further submits that the circumstances of this proposed abandonment of its common carrier obligation are consistent with prior cases where the Board exempted the proposal from the Offer of Financial Assistance ("OFA") procedures of 49 U.S.C. §10904 and the public use provisions of §10905. More specifically, the Board has granted such exemptions where, as here, there has been no need or desire for common carrier rail service in many years, there is no overhead traffic, and where the abandonment of the common carrier obligation will facilitate private use of the track. Docket No. AB-55 (Sub – No. 633X), *CSX Transportation, Inc. – Abandonment Exemption – In Genessee County, MI* (served July 25, 2007)("CSXT"); Docket No. AB-290 (Sub-No. 208X), *The Cincinnati, New Orleans and Texas Pacific Railway Co. – Abandonment Exemption – In Cumberland and Roane Counties, TN* (Served November 15, 2000)("Cincinnati"). In such cases, the Board found applying the OFA and public use provisions were not necessary to carry out the RTP, and that an exemption from these provisions served to "minimize federal control over the rail line, expedite the regulatory

decision, and reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)].” *CSXT* at 2; *Cincinnati* at 2. HC Railroad has previously demonstrated above that regulation of this proposed abandonment is not necessary to protect any shippers from an abuse of market power. HC Railroad accordingly requests that its proposed abandonment be exempted from 49 U.S.C. §§10904 and 10905.

LABOR PROTECTIVE CONDITIONS

HC Railroad has no paid railroad employees. Also, granting this petition will not result in any changes to rail service to Morristown pursuant to its separate locomotive use agreement with CSXT. There is therefore no need for labor protective conditions as a result of this proposed abandonment.

ENVIRONMENTAL AND HISTORICAL IMPACTS REVIEW

Environmental and Historic Reports containing all information required by 49 CFR §§ 1105.7 and 1105.8 were served upon all necessary parties and, along with all letters received in response to the reports, were forwarded to the Board’s Office of Environmental Analysis (“OEA”) on January 23, 2017, in Docket No. AB-1250 (Sub-No. 0X), note 1, *supra*. Counsel for HC Railroad and OEA staff have had several follow up conversations and correspondence that have supplemented the original reports. HC Railroad has been informed by the staff of the OEA that these materials will be used by them to conduct their evaluation of environmental and historical impacts of this Petition for Exemption.

CONCLUSION

For all the reasons set forth above, application of the regulatory requirements and procedures of 49 U.S.C. §§10903, 10904, and 10905 are not required to carry out the

Rail Transportation Policy set forth in 49 U.S.C. §10101. The abandonment of HC Railroad's common carrier obligation over its 6.4 mile of railroad line is also limited in scope, and there is no need for the Board to protect any rail customers from the abuse of market power. Accordingly, HC Railroad respectfully requests the Board to grant the proposed extinguishment of its common carrier obligation associated with the subject Line and the requested exemptions from §§10904 and 10905.

Respectfully submitted

A handwritten signature in blue ink that reads "Thomas W. Wilcox".

Thomas W. Wilcox, Esq.
Svetlana Lyubchenko
GKG Law, P.C.
The Foundry Building
1055 Thomas Jefferson Street NW
Suite 500
Washington, DC 20007
(202) 342-5248

Attorneys for HC Railroad, LLC

Dated: March 14, 2017

EXHIBIT A

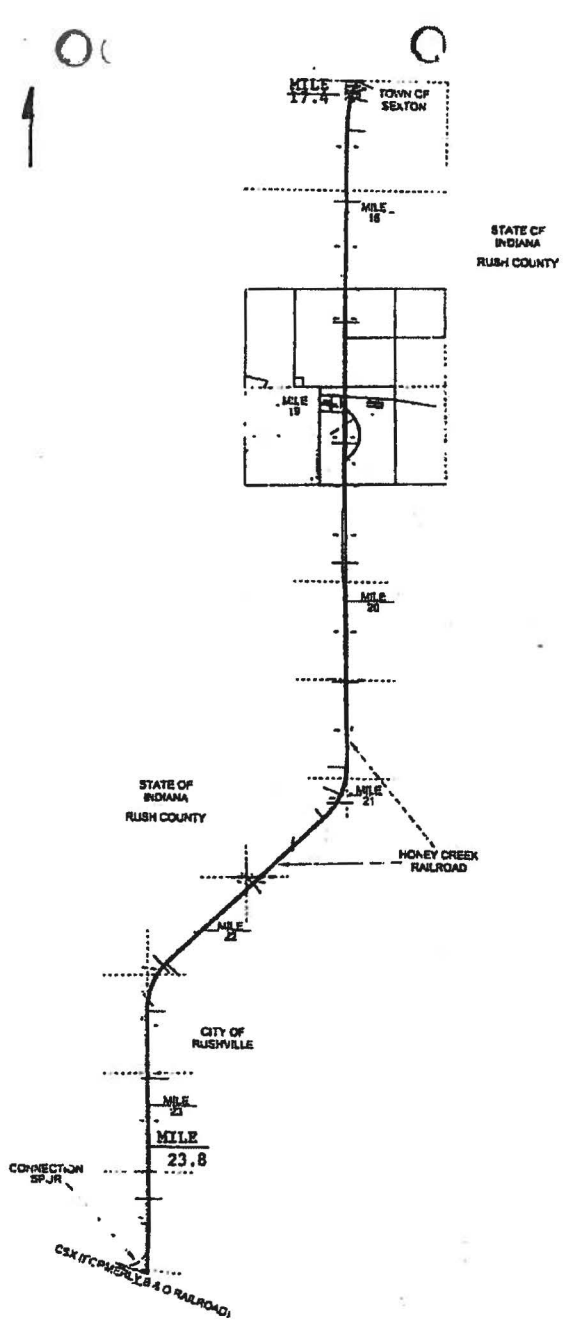


EXHIBIT B

RAILWAY TRACK AGREEMENT

This Railway Track Agreement (the "Agreement") is entered into effective as of November 2, 2010 (the "Effective Date") by and between Morristown Grain Company, Inc., an Indiana corporation ("Lessee") and HC Railroad, LLC, a Delaware limited liability company ("Lessor").

WHEREAS, the parties desire to enter into this Agreement in order to allow Lessee to operate over, utilize, move rail equipment, load and unload railcars and otherwise store railroad equipment on the rail tracks of Lessor under the specific terms and conditions described below.

NOW THEREFORE, the parties hereby agree as follows:

1. **Term.** This Agreement will be effective for a one (1) year period from the Effective Date (the "Initial Term"). At the sole option of Lessee, the Agreement will renew for additional one (1) year terms unless, 30 days prior to the expiration date of any term, written notice is given to terminate the Agreement.
2. **Use of the Track** During the term of the Agreement, Lessee shall have 24 hours per day, 7 day per week, unrestricted access to the rail track of Lessor beginning at M.P 17.4 and continuing through M.P. 23,8 as shown on Attachment "A" (the "Industrial Track") in order to use said Industrial Track for the movement of locomotives and railcars, storage of locomotives and railcars and the loading or unloading of railcars as desired by Lessee solely in connection with its primary non-Lessor business of

operating its grain elevator. Lessee may not use the Industrial Track to serve any other industry, and no such industry is located on the Industrial Track.

3. **Payment.** As consideration for use of the Industrial Track, Lessee shall pay Lessor the total sum of one hundred dollars (\$100) per year, payable to Lessor in advance of the first day of each year. Lessor will issue annual invoices for such rental fees.

4. **Lessor Use of the Sidings.**

At any time during the term of the Agreement, Lessor may give Lessee at least seven (7) days advance written notice that Lessee's access to the Industrial Track will be limited or suspended for a reasonable period of time if Lessor needs to enter upon the Industrial Track.

5. **Obligations.**

- (a) Lessee shall be responsible for the safety and supervision of its employees, agents and contractors, for compliance with all government regulations, and for the operation, safety, security and proper handling of all equipment and materials brought on or about the Industrial Track or Property on Lessee's behalf except if such equipment and movement is under the control of the Lessor.
- (b) Lessee shall be responsible for maintaining the Industrial Track in good condition and repair, in accordance with all applicable laws, and free from all debris during the term of this Agreement in order that railcars may be

moved on and off the Industrial Track and stored upon the Industrial Track without causing any damage to the railcars.

- (c) Lessee shall not, during the term of this Agreement, erect any structure, gate or other Impediment within 50 feet of the Industrial Track without the prior written permission of Lessor.
- (d) Lessee covenants and agrees that it shall throughout the Term hereof and during any period which Lessee is entitled to access to the Industrial Track, at its sole cost and expense, take out and keep in force and effect a Comprehensive Liability Policy covering its operations, which policy of insurance shall include public liability and property damage insurance with respect to operations for personal injury or death or damage to property of others in a minimum amount of one million (\$1,000,000.00) dollars. Such insurance shall name Lessor as an additional insured. Such insurance shall be without rights of cross claim or subrogation against Lessor or any person, for whom Lessor may, in law, be responsible. The policy of insurance shall provide that Lessor is to receive thirty (30) days prior notice of any material change, non-renewal or cancellation of insurance policy.
- (e) Lessee covenants and agrees to protect, indemnify and hold Lessor harmless from and against any and all loss and all claims, actions, damages, liabilities and expenses in connection with loss of life, personal injury, damage of property or any other loss or injury whatsoever to the extent caused by any negligence or intentional misconduct of Lessee;

provided that Lessee shall have no obligation to protect, indemnify and hold Lessor harmless for any loss, claims, actions, damages, liabilities and expenses to the extent caused by any negligence or intentional misconduct of Lessor.

6. **Termination.** Either party may terminate this Agreement upon a material breach by the other party that is not cured within ten (10) days notice to such party, or as otherwise provided herein.
7. **Validity.** If any provision in this Agreement is held to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired.
8. **Waiver.** No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party against whom such waiver is sought to be enforced. A waiver or consent given by a party on any occasion is effective only in the instance and shall not be constructed as a bar to, or waiver of, any right on any other occasion.
9. **Notice.** All notices required or permitted under this Agreement shall be in writing and shall be deemed given and made upon (i) in the case of personal delivery, on the date of such delivery, (ii) in the case of delivery by facsimile, on the date sent (as evidenced by confirmation of transmission by the transmitting equipment), (iii) in the case of nationally recognized overnight courier, on the next business day following deposit and (iv) in the case of mailing, on the third business day following such

of the parties

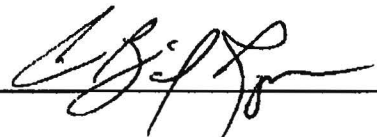
- ts, written on
cannot be

11. **Governing Law.** This Agreement shall be governed in accordance with the laws of the State of Indiana.
12. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed as original, and signature pages may be executed by facsimile or other electronic communication. All of such counterparts together shall constituted one instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HC Railroad, LLC

Morristown Grain Company, Inc.

By: 
Name: C. BAILEY RAGAN
Title: Vice President

By: 
Name: C. BAILEY RAGAN
Title: Vice President

Attachment A

Description of the Track

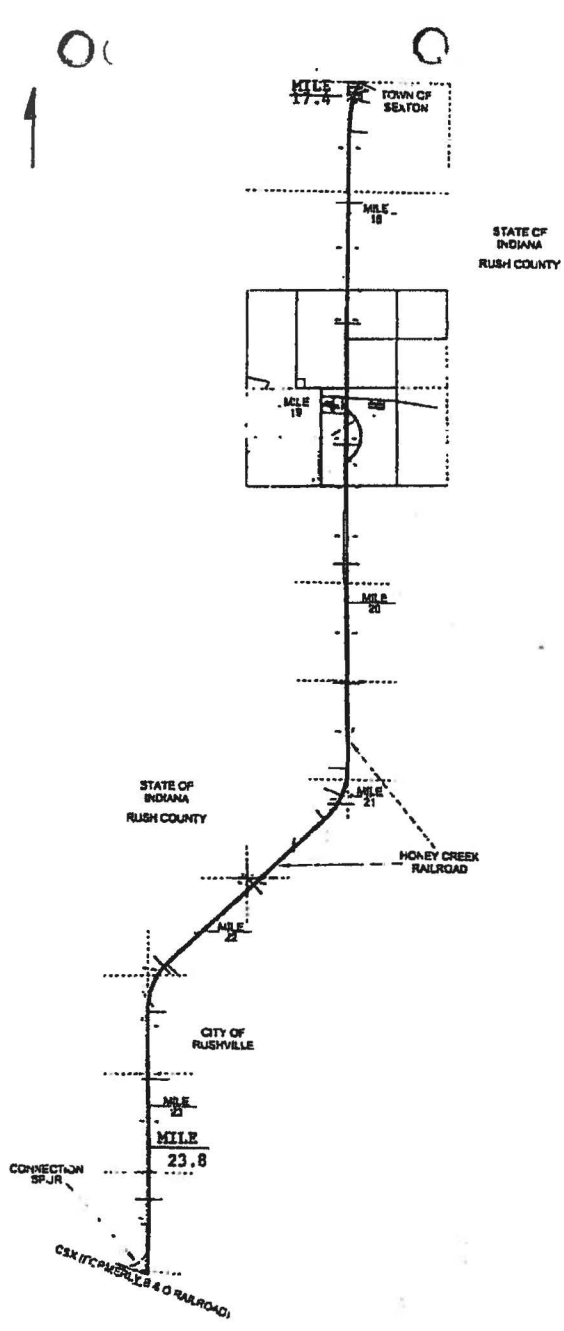


EXHIBIT C

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. AB 1250 (Sub-No 1X)

**HC RAILROAD, LLC –
ABANDONMENT EXEMPTION - IN RUSH COUNTY, INDIANA**

PETITION FOR EXEMPTION

VERIFIED STATEMENT OF TODD BASTEAN

My name is Todd Bastean. I am the President of Morristown Grain Company ("Morristown"). I am also the President of Bunge North America, Inc. ("BNA"). Morristown is an indirect wholly-owned subsidiary of BNA. Morristown owns and operates a grain handling facility in Rushville, Indiana. The facility is located at the end of a 6.4 mile track owned by HC Railroad, LLC ("HC Railroad"), which is also indirectly owned by Bunge and is therefore an affiliate of Morristown. I am aware of the fact that HC Railroad has filed a Petition for Exemption with the Surface Transportation Board that would, if granted, result in HC Railroad's common carrier obligation to provide rail service on the track being extinguished. The track itself would remain in place and its current use by Morristown would continue without change.

Morristown has no objection to HC Railroad's petition because Morristown has no need or desire for HC Railroad to provide any rail service to our facility, and we do not anticipate that such need or desire will occur in the foreseeable future. In 2010, contemporaneous with HC Railroad acquiring the track, and with Bunge purchasing Morristown, Morristown and HC

Railroad entered into a Railway Track Agreement whereby HC Railroad leased the entire acquired track to Morristown for its use as an industrial track for shuttling loaded and empty railcars to and from the CSX Transportation Inc. ("CSXT") mainline in Rushville. Pursuant to this agreement, from 2010 to 2015 Morristown used its own locomotives and employees to shuttle its railcars to and from an approximately 1400 foot industry track located near the CSXT main line, where CSXT dropped off or picked up the railcars, as the case might be. In 2015, we modified our relationship with CSXT by executing, through our indirect parent BNA, a "Locomotive Trip Lease (Unit Train Loading)" agreement whereby CSXT crews now deliver unit trains of 90 empty railcars over the 6.4 miles of track we lease from HC Railroad onto our facility track. Under this agreement, Morristown takes the trains with CSXT locomotives still attached, loads the cars, and then prepares the loaded train for CSXT to pick up and take to its interchange point. Neither Morristown nor CSXT have any rights to use the HC Railroad's track for any purpose other than an industry track pursuant to the Railway Track Agreement and Locomotive Trip Lease agreements, respectively. Finally, Morristown has assumed responsibility for maintaining the HC Railroad track and the industry track in the vicinity of the CSXT main line.

We are satisfied with the current arrangement and our use of the HC Railroad track because it provides an extremely efficient means for our facility to receive and process unit trains. The Railway Track Agreement has no set termination date and we have no intention of seeking its termination. The Locomotive Trip Lease agreement with CSXT is similarly of indefinite term, and neither party has any intention of terminating it either, since it provides significant efficiency benefits to Morristown as well as CSXT. However, in the unlikely event that either of these agreements is terminated Morristown is fully confident that its affiliate HC

Railroad would facilitate our continued use of its track to transport our cars to and from our facility to CSXT's main line. Morristown therefore has no objection to HC Railroad petitioning this Board for approval to abandon its common carrier obligation presently attached to the track.

Verification

I, Todd Bastean, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to sponsor this Verified Statement.

Executed March 13, 2017

A handwritten signature in dark ink, appearing to read "Todd Bastean", is written over a horizontal line.

Todd Bastean

EXHIBIT D

Surface Transportation Board

[AB-1250-Sub No.1X]

HC Railroad, LLC – Abandonment Exemption – In Rush County, Indiana

On March 14, 2017, HC Railroad, LLC (“HC Railroad”) filed with the Surface Transportation Board a petition seeking an exemption from the provisions of 49 USC § 10903 to abandon the common carrier service obligation over its 6.4-mile line of railroad in Rush County, Indiana (the “Line”). The Line extends from milepost 17.4 to milepost 23.8 and traverses United States Postal Service Zip Code 46173.

After the Line is abandoned for purposes of terminating the Surface Transportation Board jurisdiction over it, the Line will remain in place as an industrial track for the purpose of enabling the movement of trains and railcars to and from a grain facility owned and operated by HC Railroad’s affiliate, Morristown Grain Company (“Morristown”), located at the end of the Line. Morristown has leased the line from HC Railroad for this purpose since 2011.

Based on the information in HC Railroad’s possession, the Line does not contain any federally granted rights-of-way. Any documentation concerning the rights-of-way in HC Railroad’s possession will be made available promptly to those requesting it.

Because HC Railroad does not have paid railroad employees, it has requested that it be relieved from the imposition of any labor protective conditions. HC Railroad has also requested that it be relieved from the imposition of the Offer of Financial Assistance (“OFA”) requirements of 49 U.S.C. § 10904 and the public use provisions of 49 U.S.C. § 10905. In support, HC Railroad states that an exemption from these provisions is necessary to facilitate the transition of the Line to a private track so that Morristown, the only rail shipper, can continue to use it as an industrial track under the terms of its lease agreement with HC Railroad.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. §10502(b). A final decision will be issued by [____], 2017.

Any OFA under 49 CFR §1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption, unless the Board grants the requested exemption from the OFA process.

All filings in response to this notice must refer to STB Docket No. AB-1250 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, 395 E Street, SW, Washington, DC 20423-0001; and (2) Thomas W. Wilcox, Esq., GKG Law, P.C. The Foundry Building, 1055 Thomas Jefferson Street, NW, Suite 500, Washington, D.C. 20007. Replies to the petition are due on or before [____] 2017.

Persons seeking further information concerning the Board's abandonment procedures may contact the Surface Transportation Board or refer to the full abandonment and discontinuance regulations at 49 CFR Part 1152. Questions pertaining to environmental issues may be submitted to the Board's Office of Environmental Analysis at (202) 254-0295.

An environmental assessment ("EA") or environmental impact statement ("EIS"), if necessary, will be prepared by the Office of Environmental Analysis and will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of an EA (or EIS), if one is prepared, may contact the Board's Office of Environmental Analysis. The EA (or EIS), if one is prepared, will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will be within 30 days of its service.

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

Decided:_____

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

EXHIBIT E



CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. §1152.60(d), the undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-1250 (Sub-No. 1X) was previously mailed on December 21, 2016 to the following parties in conjunction with HC Railroad, LLC's Notice of Exemption in Docket No. AB-1250 (Sub-No. 0X) (subsequently withdrawn):

Military Surface Deployment and
Distribution Command
Transportation Engineering Agency
Railroads for National Defense
1 Soldier Way, Bldg. 1900W
Scott AFB, IL 62225

Indiana Utility Regulatory Commission
PNC Center
101 W. Washington Street, Suite 1500E
Indianapolis, IN 46204

Mr. Thomas L. Tidwell
Chief of the Forest Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, D.C.
20250-1111

Regional Director
Midwest Region
National Park Service
601 Riverfront Drive
Omaha, NE 68102-4226

National Park Service
1849 C Street NW
Washington, DC 20240

In addition, a copy of the Petition for Exemption was served on the office of the Mayor of Rushville on March 14, 2017 at the following address:

Mr. Michael Pavey
Office of the Mayor of Rushville
133 West First Street
Rushville, IN 46173

Pursuant to 49 C.F.R. §1105.11, the undersigned hereby certifies that copies of the Environmental Report and Historic Report required for the proposed abandonment were mailed to the parties listed on the attached Service List, on October 31, 2016, as required by 49 C.F.R. §§1105.7(b) and 1105.8(c) in conjunction with HC Railroad, LLC's Notice of Exemption in Docket No. AB-1250 (Sub-No. 0X) (subsequently withdrawn).

The undersigned hereby certifies that based on communications with employees of the Board's Section of Environmental Analysis ("SEA"), the service and certification requirements of 49 C.F.R. §1105.11 and 49 C.F.R. §1152.60(d) in this Docket No. AB-1250 (Sub-No. 1X) are considered by SEA to be fulfilled as a result of the petitioner's compliance with the analogous requirements in Docket No. AB-1250 (Sub-No. 0X).



Thomas W. Wilcox, Esq.
GKG Law, P.C.
The Foundry Building
1055 Thomas Jefferson Street NW
Suite 500
Washington, DC 20007
(202) 342-5248
Counsel for HC Railroad, LLC

**SERVICE LIST
ENVIRONMENTAL AND HISTORIC REPORTS**

Office of the Governor
200 W. Washington St., Rm. 206
Indianapolis, IN 46204

Mr. Michael Pavey
Office of the Mayor of Rushville
133 West First Street
Rushville, IN 46173

Rush County Commissioners
Rush County Courthouse
101 East Second Street, Room 102
Rushville, Indiana 46173

National Park Service
Midwest Region
Cam Sholly, Regional Director
601 Riverfront Drive
Omaha, NE 68102-4226

Communications and Outreach Branch
National Geodetic Survey
1315 East-West Highway
Silver Spring, MD 20910-3282

United States Army Corps of Engineers
Louisville District
P.O. Box 59
Louisville, KY 40201-0059

Indiana State Department of Agriculture
One North Capitol Avenue
Suite 600
Indianapolis, IN 46204

Department of Historic Preservation and
Archaeology
402 W. Washington Street, W274
Indianapolis, IN 46204

Ms. Jane Hardisty
State Conservationist
Natural Resources Conservation Service
Indiana State Office
6013 Lakeside Boulevard
Indianapolis, IN 46278

Rush County Highway Department
1352 East State Road 44
Rushville, IN 46173

Indiana Department of Transportation
Greenfield District
32 South Broadway
Greenfield, IN 46140

Rush County Health Department
Rush County Courthouse
101 East Second Street, Room 105
Rushville Indiana 46173

Indiana Department of Natural Resources
Division of Water
Division of Fish and Wildlife
402 West Washington Street
Indianapolis, IN 46204

United States Environmental Protection
Agency
Region 5
Ralph Metcalfe Federal Building
77 West Jackson Blvd.
Chicago, IL 60604-3590

City of Rushville/Rush County
Joint Planning and Zoning Office
Rush County Courthouse
101 East Second Street, Room 211
Rushville, Indiana 46173

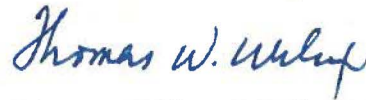
Indiana Department of Environmental
Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204

Office of Energy Development
1 North Capitol, Suite 900
Indianapolis, IN 46204
Office: 317-232-8939

United States Fish and Wildlife Service
Midwest Region
5600 American Blvd. West, Suite 990
Bloomington, MN 55437-1458

CERTIFICATION OF PUBLICATION

The undersigned hereby certifies that notice of the proposed abandonment in Docket No. AB-1250 (Sub-No. 1X) in the following form was advertised on March 14, 2017 in the *Rushville Republican*, a newspaper of general circulation in Rush County, Indiana, as required by 49 C.F.R. § 1105.7(c) and 49 C.F.R. § 1105.12.



Thomas W. Wilcox, Esq.
GKG Law, P.C.
The Foundry Building
1055 Thomas Jefferson Street NW
Suite 500
Washington, DC 20007
(202) 342-5248

Counsel for HC Railroad, LLC

Printed 03/09/17 16:39

INDIANA MEDIA GROUP

PO BOX 607
GREENSBURG IN 47240-0607

PHONE: 877-253-7755
FAX: 765-648-4229

Advertising Payment Receipt

Account number:	221735	Credit Card #:	*****9863
Account name:	GKG LAW, P.C. 1055 THOMAS JEFFERSON ST. WASHINGTON DC 20007	Approval Code:	92991G[150821213]
		Credit Holder Name:	
Phone number:	202-342-6779		
Payment number:	982105		
Payment date:	03/09/17		
Amount:	103.02		
Payment description:	CREDIT CARD PAYMENTS GKG LAW, P.C.		

Ad Number:	1301937	Class Code:	105
Ad Taker:	cpitt	Salesperson:	A35
First Words:	NOTICE OF INTENT TO ABAN		

Notice of Intent To Abandon

HC Railroad, LLC ("HC Railroad") gives notice that on or about March 14, 2017, it intends to file with the Surface Transportation Board, Washington, DC ("Board"), a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903, et seq., seeking authority to abandon its 6.4-mile line of railroad for the purpose of removing it from the national railroad system and converting it into a private track. The railroad line runs between railroad milepost 17.4 and milepost 23.8, within United States Postal Service ZIP Code 46173 in Rush County, Indiana. The proceeding has been docketed as No. AB-1250 (Sub-No. 1X).

The Board's Office of Environmental Analysis ("OEA") will generally prepare an Environmental Assessment ("EA"), which will normally be available 60 days after the filing of the petition for abandonment exemption. Comments on environmental and energy matters should be filed no later than 30 days after the EA becomes available to the public and will be addressed in a Board decision. Interested persons may obtain a copy of the EA or make inquiries regarding environmental matters by writing to the OEA, Surface Transportation Board, Washington, DC or by calling the OEA at (202) 254-0295.

Unless also exempted, appropriate offers of financial assistance to continue rail service can be filed with the Board. Requests for environmental conditions, public use conditions, or rail banking/trails use also can be filed with the Board. An original and 10 copies of any pleading that raises matters other than environmental issues (such as trails use, public use, and offers of financial assistance) must be filed directly with the Board's Office of Proceedings, Washington, DC, and one copy must be served on the applicant's representative. Questions regarding offers of financial assistance, public use or trails use 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 the applicant's representative: Thomas W. Wilcox, GKG Law, P.C., 1055 Thomas Jefferson Street, NW, Suite 500, Washington, D.C. 20007; tel. (202) 342-5248.

EXHIBIT F

VERIFICATION

District of Columbia)
)
City of Washington)

I, Thomas W. Wilcox state that I am counsel for HC Railroad, LLC ("HC Railroad"), that I am duly authorized to make this verification; and that I have read the foregoing Petition for Exemption and have knowledge of the facts and matters relied upon and that all representations set forth therein are true and accurate as stated, to the best of my knowledge, information and belief.

Thomas W. Wilcox

Thomas W. Wilcox

Sworn and subscribed to me

This 14th day of March, 2017

Elise M. Schaengold

Notary Public

My commission expires

ELISE M. SCHAENGOLD
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires April 14, 2018

