



September 21, 2017

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Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

ENTERED
Office of Proceedings
September 26, 2017
Part of
Public Record

Re: AB-1106X, ABE Fairmont, LLC – Abandonment Exemption – In Fillmore County, NE

AB-6 (Sub-No. 488X), BNSF Railway Company – Discontinuance of Service Exemption – In Fillmore County, NE

Dear Ms. Brown:

Flint Hill Resources Fairmont, LLC ("FHR") is submitting this letter in support of ABE Fairmont, LLC's ("ABE") request to abandon its common carrier obligation over approximately 2.77 miles of rail line extending from milepost 0.93 to milepost 3.70 (the "Line"). FHR also supports the request of BNSF Railway Company's ("BNSF") to discontinue its trackage rights over approximately 0.77 miles of the Line extending from milepost 0.93 to milepost 1.70 in Fillmore County, NE. These actions are necessary in order to allow FHR to acquire the Line as a private line of railroad, for ABE to rid itself of a common carrier obligation that it never desired to hold in the first place, and for BNSF to continue to serve FHR and The Andersons, Inc. d/b/a O'Malley Grain Company ("The Andersons")¹ via various contractual agreements.

The Board's August 17, 2017 decision has adequately explained the background and history of this proceeding. Suffice it to say that ABE, as the prior owner of the Fairmont ethanol plant, never desired to be a carrier, nor does FHR.² Indeed, at the time FHR bought the Fairmont

¹ FHR ships over 88 % of the carloads over the Line. The Andersons are the only other shipper on the Line.

² Like ABE, FHR has no desire to be in the rail business. As such, when FHR bought the Fairmont plant, it purposely did not acquire ABE's latent common carrier obligation. Instead, it entered into various agreements, including an agreement to purchase the Line once ABE's common carrier obligation was removed. Thus, as of this time, the only remaining "asset" held by ABE with respect to its former Fairmont plant is the Line ownership itself and the corresponding common carrier obligation.

plant, ABE informed FHR that from their perspective they had acquired a private line of railroad and had taken assignment of various industry track agreements providing BNSF with access to serve that plant when they purchased the Fairmont plant. According to ABE, at the time it purchased the plant, ABE neither knew it had acquired a common carrier line of railroad nor desired to hold or acquire a common carrier obligation. It was only when FHR conducted due diligence for its purchase of the Fairmont ethanol plant that the parties discovered the history of the Line.

Since that time, the various parties involved, ABE, FHR, The Andersons, and BNSF, reached numerous agreements to facilitate the removal of ABE's common carrier obligation, FHR's purchase of the Line, conversion of the track to private track, but nonetheless still maintain rail service to The Andersons and FHR. While FHR understands the Board's concerns set forth in the August 17 decision with respect to converting regulated lines of track to private track, FHR can unequivocally state that its interests and those of The Andersons and BNSF are more than fully protected through the various private agreements. These various agreements more than mitigate any loss of regulatory remedies associated with the removal of the common carrier obligation over the Line.³ The Board should not use government technicalities and regulations to impose a continued common carrier obligation on a party that does not want it and never desired it in the first place. This is especially the case when the parties directly involved have reached satisfactory marketplace solutions that protect everyone's interest in continued rail service.

At this juncture, FHR, The Andersons, ABE, and BNSF all desire to move forward with the abandonment and conversion of the line to private industry track. The Parties have carefully crafted the ITAs to provide protective measures for all. As such, FHR respectfully requests that the Board grant ABE's abandonment and BNSF's discontinuance as requested.

Sincerely,



Kevin Karasiuk, Plant Manager
Flint Hill Resources Fairmont, LLC



³ The parties have entered into various Industry Track Agreements ("ITAs"). Under those ITAs, as long as FHR and The Andersons desire rail service, BNSF has the contractual right to operate over the Line to provide that service. The ITAs provide extensive remedies for service failures and/or FHR's failure to properly maintain the Line and give BNSF the right to serve any future shippers that may locate on the Line, so long as such future service does not interfere with the provision of service to FHR and/or The Andersons. The agreements also give The Andersons the right to purchase the Line so as to continue to receive service from BNSF in the event that FHR no longer desires rail service.



September 26, 2017

VIA EMAIL ONLY

Rena Laws-Byrum
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001
rena.laws-byrum@stb.gov

Re: AB-1106X, ABE Fairmont, LLC – Abandonment Exemption – In Fillmore County, NEB.

AB-6 (Sub-No. 488X), BNSF Railway Company – Discontinuance of Service Exemption – In Fillmore County, NEB.

Dear Ms. Laws-Byrum:

This certifies that on September 21, 2017, I served a copy of the September 19, 2017 letter from Flint Hills Resources Fairmont, LLC, attached for reference, on all parties of record.

Very Truly Yours,

Kevin Karasiuk
Plant Manager
Flint Hills Resources Fairmont, LLC

Enclosure (1)