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**SURFACE
TRANSPORTATION BOARD**

THOMAS F. MCFARLAND

LAW OFFICE

THOMAS F. MCFARLAND, P.C.

208 SOUTH LASALLE STREET - SUITE 1890

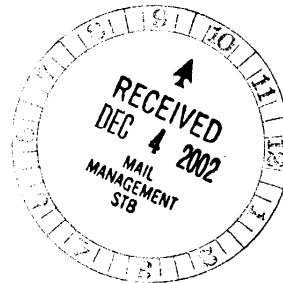
CHICAGO, ILLINOIS 60604-1194

TELEPHONE (312) 236-0204

FAX (312) 201-9695

mcfarland@aol.com

December 3, 2002



DID# 0102093001

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Finance Docket No. 34291, *Comrail International Railroad, Inc. -- Operation Exemption -- Chicago Heights Railcar, Inc.*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Verified Notice Of Exemption Under 49 C.F.R. § 1150.31, for filing with the Board in the above referenced matter.

Also enclosed is Comrail's check #1238 in the amount of \$1,300 for the filing fee.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Comrail
International Railroad, Inc.

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**SURFACE
TRANSPORTATION BOARD**

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Office of Proceedings

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Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

COMRAIL INTERNATIONAL)
RAILROAD, INC. -- OPERATION) FINANCE DOCKET
EXEMPTION -- CHICAGO HEIGHTS) NO. 34291
RAILCAR, INC.



VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31

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**SURFACE
TRANSPORTATION BOARD**

COMRAIL INTERNATIONAL RAILROAD, INC.
1555 State Street
Chicago Heights, IL 60411

Applicant

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DEC 04 2002

**SURFACE
TRANSPORTATION BOARD**

THOMAS F. McFARLAND
Thomas F. McFarland, P.C.
208 South LaSalle Street
Suite 1890
Chicago, IL 60604
(312) 236-0204

Attorney for Applicant

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Office of Proceedings

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Public Record

DATE FILED: December 4, 2002

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**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

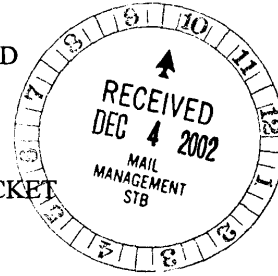
COMRAIL INTERNATIONAL)
RAILROAD, INC. -- OPERATION) FINANCE DOCKET
EXEMPTION -- CHICAGO HEIGHTS) NO. 34291
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ENTERED
Office of Proceedings

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Public Record**

**VERIFIED NOTICE OF EXEMPTION
UNDER 49 C.F.R. § 1150.31**



FILED

DEC 04 2002

**SURFACE
TRANSPORTATION BOARD**

Pursuant to 49 C.F.R. § 1150.31, *et seq.* and 49 U.S.C. § 10502(a), COMRAIL

INTERNATIONAL RAILROAD, INC. (Comrail), a noncarrier, hereby provides verified notice of exemption from 49 U.S.C. § 10901 for its operation over approximately 4,200 feet of trackage owned by Chicago Heights Railcar, Inc. (CHR) at Chicago Heights, Illinois. The proposed operation is more particularly described as follows: (1) over CHR Track Nos. 1, 2 and 3 to and from their point of connection with Chicago Heights Terminal-Union Pacific (CHT-UP) Track No. 812; and (2) over CHR Track Nos. 4, 5 and 6 to and from their point of connection with CHT-UP Track No. 813, a distance of approximately 4,200 feet in Chicago Heights, Cook County, Illinois ("subject trackage"). A print showing the subject trackage is attached to this Notice as Appendix 1.

**THE SUBJECT TRackage IS A LINE OF RAILROAD THAT
QUALIFIES FOR THE CLASS EXEMPTION FROM 49 U.S.C. § 10901,
RATHER THAN TRACK EXCEPTED FROM BOARD ACQUISITION
AND OPERATION AUTHORITY UNDER § 10906**

The subject trackage and the underlying land are owned by CHR. CHR is in the business of maintaining and repairing railroad freight cars. Freight cars are transported to and from

CHR's facility as empty cars moving on their own wheels as revenue freight traffic, or as instrumentalities of transportation moving under the tank car equalization rules.

Union Pacific Railroad Company (UP) tenders freight cars for delivery to CHR and picks up such cars after repair on trackage formerly owned by Chicago Heights Terminal Transfer Railroad, known as CHT-UP Track Nos. 812 and 813. At present, CHR performs terminal switching of those cars over its Track Nos. 1 through 6. Each of those tracks is approximately 700 feet in length. As such, there is a total of approximately 4,200 feet of trackage on the CHR property.

CHR and Comrail have entered into an operating agreement whereby Comrail will perform terminal switching over the subject trackage with a Comrail locomotive and train crew. Comrail will enter into a standard interchange agreement with UP. Operation over the subject trackage will be Comrail's initial rail operation. However, Comrail hopes and intends to provide similar rail operations for other entities in the industrial area of Chicago Heights, Illinois in the future.

In those circumstances, the subject trackage is properly considered to be a line of railroad under 49 U.S.C. § 10901 pursuant to the Board's tenant-use test, rather than spur, switching or side tracks excepted from Board authority over their acquisition and operation by virtue of 49 U.S.C. § 10906. The tenant-use test is described in the Board's decision denying reconsideration in *Effingham Railroad Company - Petition for Declaratory Order - Construction at Effingham, IL*, STB Docket No. 41986 and embraced proceedings, 1998 STB LEXIS 253, decision served September 18, 1998; *aff'd sub nom. United Transp. Union v. Surface Transp. Bd.*, 183 F.3d 606 (7th Cir. 1999).

In that case, as here pertinent, Agracel Corporation transloaded beer from rail to truck at a warehouse that it operated in an industrial park at Effingham, IL. Agracel owned approximately 206 feet of right-of-way and track that extended between its warehouse and trackage owned and operated by Conrail. Previously, Conrail had operated over the Agracel trackage to provide service to Agracel. It was proposed that Effingham Railroad Company (ERRC), a noncarrier, substitute for Conrail as provider of the rail service over the Agracel trackage. ERRC filed a notice of exemption under 49 C.F.R. § 1150.31 for its operation over that trackage. The United Transportation Union (UTU) contended that the Board lacked authority over the proposed operation because the Agracel trackage is spur, switching or side track excepted from Board operation authority under 49 U.S.C. § 10906.

In finding that the Agracel trackage was a line of railroad under 49 U.S.C. § 10901, the Board said (1998 STB LEXIS 253, at 8-9 (emphasis in original)):

... (I)n those cases where a tenant railroad's intended use of a track segment is different from the use made by the railroad owning the track, we have determined that the tenant's use, rather than the character of the trackage itself, is controlling with regard to its own operations, subject to consideration of the purpose and effect of the construction under *Texas & Pacific* (citations omitted).

In the initial notice, even under its new approach, ERRC became the operator of a line of track connecting Conrail to the site of the industrial park. Conrail clearly had operated this short track segment as an exempt siding or spur. However, because it was ERRC's initial railroad operation, this track segment became ERRC's entire line of railroad and was not, as to ERRC, a siding or spur. This small piece of trackage initiated ERRC's service from a connection or interchange point with Conrail to a shipper's facility within the industrial park. Thus ERRC's becoming the operator was the proper subject of the initial notice of exemption and was not statutorily exempt under section 10906.

It is apparent from the Board's decision in that case that the tenant-use test also applies when a new rail carrier is using trackage pursuant to an operating agreement rather than a lease, and when the prior use of the track was by a third-party rail carrier rather than by the shipper-

owner of the trackage. In upholding the Board's decision in that case, the reviewing court held that it was reasonable for the Board to classify the trackage by virtue of the tenant's use. *United Transp. Union v. Surface Transportation Bd.*, *supra*, 193 F.3d at 614. *Accord: Chicago Rail Link LLC - Lease & Oper. - Union Pacific R.R. Co.*, 2 S.T.B. 534 (1997), *aff'd sub nom. United Transp. Union - Illinois v. Surface Transp.*, 169 F.3d 474 (7th Cir. 1999).

Inasmuch as the subject transaction will be Comrail's initial railroad operation, and the subject trackage will constitute its entire line of railroad, it follows that the subject trackage is a line of railroad under 49 U.S.C. § 10901, rather than spur, switching or side tracks excepted from Board acquisition and operation authority by virtue of 49 U.S.C. § 10906.

INFORMATION REQUIRED BY 49 C.F.R. § 1150.33

(a) The full name and address of the applicant;

The full name and address of the applicant is Comrail International Railroad, Inc., 1555 State Street, Chicago Heights, IL 60411.

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

Comrail's representative is Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1194, (312) 236-0204.

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

An agreement between CHR and Comrail for Comrail's operation of the subject trackage has been reached.

(d) The operator of the property;

Comrail will be the operator of the property.

(e) A brief summary of the proposed transaction, including:

(1) The name and address of the railroad transferring the subject property,

The entity transferring the right to perform rail operations is Chicago Heights Railcar, Inc., 401 East 16th Street, Chicago Heights, IL 60411.

(2) The proposed time schedule for consummation of the transaction,

The proposed operation is scheduled to be consummated no earlier than seven days after the filing of this Notice.

(3) The mile-posts of the subject property, including any branch lines, and

The subject trackage is not described by milepost numbers. It is described as CHR Track Nos. 1 through 6, a distance of approximately 4,200 feet, in Chicago Heights, Cook County, Illinois.

(4) The total route miles being acquired;

A total of approximately 4,200 feet of track is proposed to be operated.

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States;

A print of the subject trackage is attached as Appendix 1.

(g) A certificate that applicant's projected revenues do not exceed those that would qualify it as a Class III carrier.

The required certificate is attached to this Notice as Appendix 2.

CAPTION SUMMARY

A caption summary required by 49 C.F.R. § 1150.34 is attached to this Notice as Appendix 3.

ENVIRONMENTAL AND HISTORIC REPORT

The proposed operation does not require environmental and historic reporting. *See* 49 C.F.R. § 1105.6(c)(2)(i) and 49 C.F.R. § 1105.8(b)(1).

LABOR PROTECTION

Pursuant to 49 U.S.C. § 10901(c), labor protection requirements do not apply to this transaction.

VERIFICATION

The verification of Thomas F. McFarland in behalf of Comrail is attached to this Notice as Appendix 4.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, within 30 days of the filing of this Notice, the Director of the Board's Office of Proceedings should publish notice in the *Federal Register* of the filing of this notice of exemption. *See* 49 C.F.R. § 1150.32(b).

Respectfully submitted,

COMRAIL INTERNATIONAL RAILROAD, INC.
1555 State Street
Chicago Heights, IL 60411

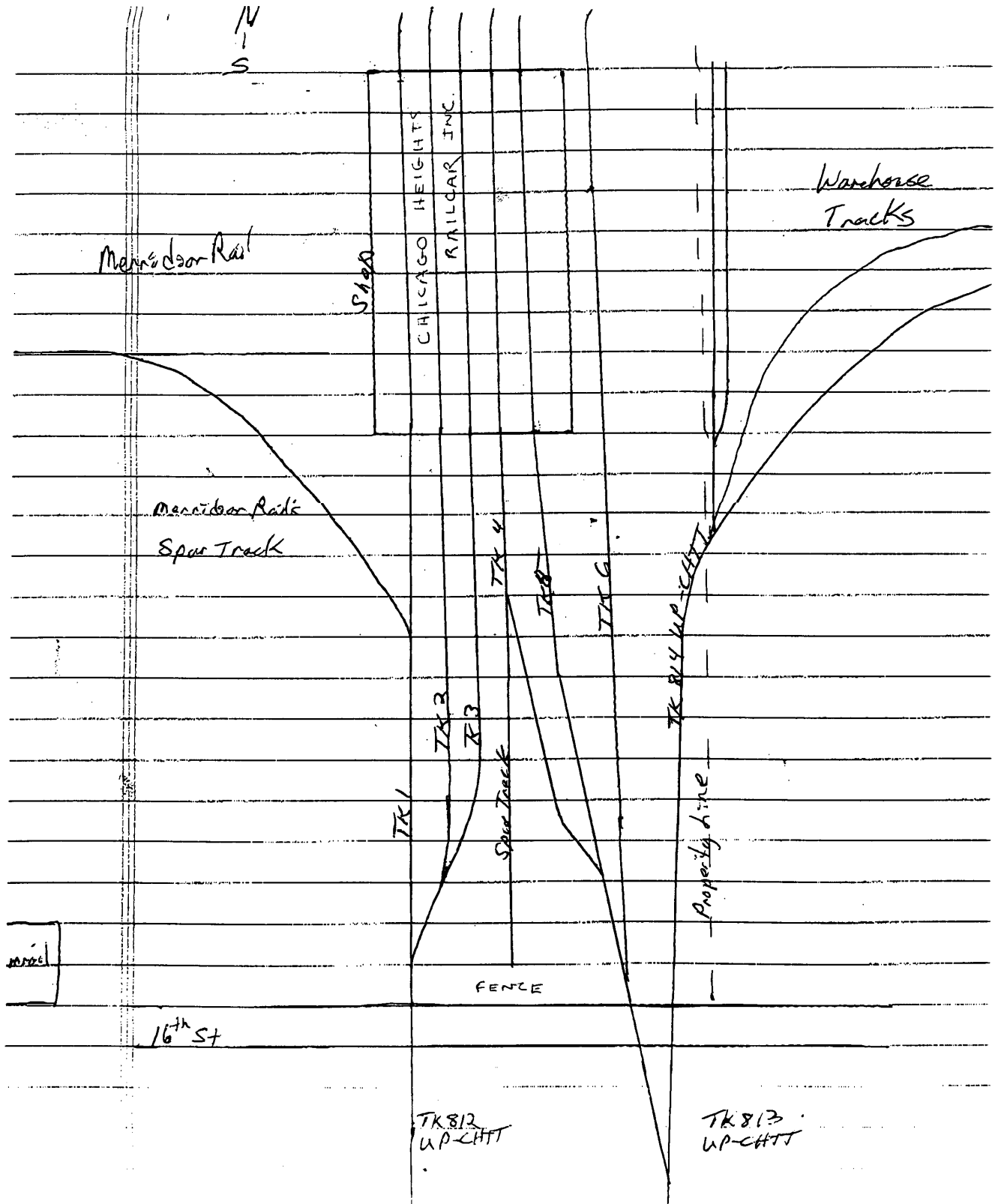
Applicant

Thomas F. McFarland

THOMAS F. McFARLAND
Thomas F. McFarland, P.C.
208 South LaSalle Street
Suite 1890
Chicago, IL 60604
(312) 236-0204

Attorney for Applicant

DATE FILED: December 4, 2002



APPENDIX 2

CERTIFICATION UNDER 49 C.F.R. § 1150.33(g)

Comrail International Railroad, Inc. hereby certifies under 49 C.F.R. § 1150.33(g), that the projected revenues from the operation proposed in this matter do not exceed those that would qualify it as a Class III rail carrier.



Thomas F. McFarland
Thomas F. McFarland
Authorized Representative of
Comrail International Railroad, Inc.

SUBSCRIBED and SWORN to
before me this 3rd day of
December, 2002.

Kathleen Lenihan
Notary Public

APPENDIX 3

CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FINANCE DOCKET NO. 34291,

COMRAIL INTERNATIONAL RAILROAD, INC.
– OPERATION EXEMPTION –
CHICAGO HEIGHTS RAILCAR, INC.

Comrail International Railroad, Inc. (Comrail), a noncarrier, has filed a Notice of Exemption to operate pursuant to an operating agreement with Chicago Heights Railcar, Inc. (CHR) approximately 4,200 feet of trackage at Chicago Heights, Illinois, known as CHR Track Nos. 1 through 6 connecting with Track Nos. 812 and 813 owned by Union Pacific Railroad Company. Comments must be filed with the Board and be served on Comrail's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604, (312) 236-0204.

The Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

By the Board

(SEAL)

Vernon A. Williams, Secretary

APPENDIX 4

VERIFICATION

STATE OF ILLINOIS)
)
COUNTY OF COOK)

Thomas F. McFarland, being duly sworn, states that he is attorney for Comrail International Railroad, Inc. (Comrail); that he is familiar with the factual allegations made in the foregoing Notice of Exemption in behalf of Comrail; and that such allegations are true as stated.

Thomas F. McFarland
Thomas F. McFarland



SUBSCRIBED and SWORN to
before me this 3rd day of
December, 2002.

Kathleen Lenihan
Notary Public