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ORIGINAL

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JAN 21 2004  
SURFACE  
TRANSPORTATION BOARD

2099/2

January 20, 2004

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW (7<sup>th</sup> fl.)  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings

JAN 21 2004

Part of  
Public Record

Dear Secretary Williams:

Enclosed for filing in STB Docket No. 863X, City of Venice-Abandonment Exemption-Between Branch Street Yard, MO, and McKinley Junction, IL are the original and ten copies of the Petition for Reconsideration of Terminal Railroad Association of St. Louis.

Additional copies of this letter and of the Petition are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

Service of the this letter and the Petition upon the City of Venice and Madison County Transit has been effected by facsimile transmitting copies of thereof to their representatives.

If you have any question concerning the foregoing which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Sincerely yours,

**FILED**

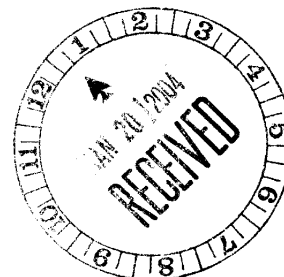
JAN 21 2004

**SURFACE  
TRANSPORTATION BOARD**

*Fritz R. Kahn*  
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enc.

cc: Charles H. Montange, Esq. (206) 546-3739  
Mr. Jerry Kane (618) 797-7547



BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

ORIGINAL

STB Docket No. 863X

209912

CITY OF VENICE  
- ABANDONMENT EXEMPTION -  
BETWEEN BRANCH STREET YARD, MO,  
AND MCKINLEY JUNCTION, IL

**FILED**  
JAN 21 2004  
SURFACE  
TRANSPORTATION BOARD  
PETITION FOR RECONSIDERATION  
OF  
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

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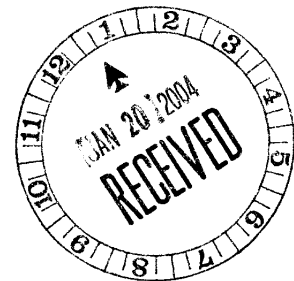
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Attorneys for

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

Dated: January 20, 2004.



BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

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STB Docket No. 863X

CITY OF VENICE  
– ABANDONMENT EXEMPTION –  
BETWEEN BRANCH STREET YARD, MO,  
AND MCKINLEY JUNCTION, IL

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PETITION FOR RECONSIDERATION  
OF  
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

Terminal Railroad Association of St. Louis ("TRRA"), pursuant to 49 C.F.R. 1152.50(d)(3), petitions for reconsideration of the Decision of the Board, served December 29, 2003, 66 Fed. Reg. 75021, December 29, 2003, accepting the Notice of Exemption of the City of Venice ("Venice"), filed December 9, 2003, and declaring that, unless stayed in the interim, the exemption will be effective January 28, 2004, and in support thereof TRRA states, as follows:

1. Venice's Notice of Exemption contains false or misleading information, and, accordingly, the Board should declare Venice's use of the two-year-out-of-service exemption of 49 C.F.R. 1152.50 void *ab initio* and should summarily reject Venice's Notice of Exemption.
2. By its Notice of Exemption, Venice purports to seek the Board's authorization to abandon what it terms its approximately two-mile line of railroad between Branch Street Yard in

St. Louis, MO, and McKinley Junction, IL, a segment of which passes through the Madison Yard<sup>1</sup> and other property of TRRA. Nowhere in its Notice of Exemption does Venice reveal that the railroad line in fact long has been abandoned by the Norfolk and Western Railway Company ("N&W"), pursuant to the Decision and Notice of Interim Trail Use of Abandonment in Docket No. AB-290 (Sub-No. 139X), Norfolk and Western Railway Company--Abandonment Exemption--In Madison and St. Clair Counties, IL, and the City of St. Louis, MO, served April 25, 1994.<sup>2</sup> Pursuant to 49 U.S.C. 10501(a), the Board, however, is vested with authority only over property used for transportation by a rail carrier. The agency lacks jurisdiction to authorize the abandonment or otherwise deal with the McKinley Bridge and the elevated trestles affording access to it which no longer are railroad properties, and Venice's Notice of Exemption, accordingly, should be rejected.

3. Venice in its Notice of Exemption falsely represented itself as a railroad entitled to avail itself of the two-year-out-of-service exemption of 49 C.F.R. 1152.50. The Decision of the Interstate Commerce Commission in Exemption of Out of Service Rail Lines, 366 I.C.C. 885 (1983), and the implementing regulations therein adopted permit of no doubt that the exemption was intended to permit rail carriers quickly and easily to rid themselves of railroad lines for which

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<sup>1</sup> The supports for the steel trestle are located in TRRA's Madison Yard and prevent the realignment of yard tracks to render switching operations more efficient and economical.

<sup>2</sup> TRRA is reluctant to note, lest it be accused of waging an *ad hominem* attack upon him, that present counsel for Venice participated in the N&W abandonment proceeding as counsel for Madison County Transit, which, Venice, at page 11 of its Notice, acknowledged "railbanked the portion of the rail line immediately adjacent to the line at issue here at McKinley Junction."

there was no continuing need.<sup>3</sup> Venice, however, is not, and never has been, a common carrier railroad, and, since it cannot use the exemption, its Notice of Exemption should be rejected..

4. Venice acquired the McKinley Bridge and the elevated trestles affording access to it in a sale and lease-back conveyance by the Illinois Terminal Railroad Company, a predecessor of the N&W, approved by the Interstate Commerce Commission by its Decision in Illinois Term. R. Co. Abandonment, 327 I.C.C. 70 (1958). The transaction was described, 327 I.C.C. at 70-71, as follows:

Under the proposed transaction the applicant will sell the bridge properties to the City of Venice, and that body concurrently will convey to the applicant the exclusive right to use and operate the railroad portions of the bridge for railroad operations. The applicant states its operations and service between, in, and through St. Louis and Venice will continue to be provided and maintained without any interruption whatsoever, and there is no intention on the part of the applicant to abandon, in any respect, its service or operations presently existing.

The Interstate Commerce Commission, 327 I.C.C. at 72-73, added:

Under the proposed "Railroad Agreement," a copy of which is attached to the application, the city will grant unto the applicant the right to operate its trains over the bridge and considered line of railroad, which right will be exclusive except that applicant may grant trackage rights to other railroads.

5. At page 11 of its Notice of Exemption, Venice improperly states that "in acquiring all Illinois Terminal Railroad [Company]'s interests in the property in 1958 [Venice] also acquired a common carrier obligation to the two mile line of railroad involved in this proceeding." By its mere acquisition of the physical assets, Venice did not become a common carrier railroad. To the contrary, the common carrier obligation remained with the Illinois Terminal Railroad Company,

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<sup>3</sup> Of course, anyone can file an adverse abandonment application, STB Docket No. AB-596, New York City Economic Development Corporation-Adverse Abandonment-New York Cross Harbor Railroad in Brooklyn, NY, served August 28, 2003, app. pend., No. 03-1269, New York Cross Harbor Railroad v. STB (DC Cir.), but Venice has filed its Notice on its own behalf.

which, under the agreement with Venice approved by the Commission, had the exclusive rights to render railroad service on the McKinley Bridge and the elevated trestles affording access to it. Venice as a result of the transaction no more became a rail carrier than did the State of Wisconsin Department of Transportation in STB Finance Docket No. 34181, State of Wisconsin Department of Transportation–Petition for Declaratory Order, served July 30, 2002 ("We see no basis for finding that our approval is required or that WisDot would become a rail carrier subject to our jurisdiction as a result of this transaction."); the State of Georgia Department of Transportation in STB Finance Docket No. 34057, State of Georgia, Department of Transportation–Acquisition Exemption–South Carolina Central Railroad, Inc., served April 30, 2002 ("By merely acquiring certain rail assets from [South Carolina Central Railroad, Inc., State of Georgia, Department of Transportation] will not become a carrier or acquire a common carrier obligation."); or the City of Oshkosh in Finance Docket No. 32452, City of Oshkosh, WI and Wisconsin Central Ltd.–Petition for Declaratory Order, served June 8, 1994 ("We conclude that the property transfer here does not involve the transfer of common carrier rights or obligations subject to the jurisdiction of this Commission, and that the City will not become a common carrier as a result of the agreement.").

6. Venice does not even have a residual common carrier obligation, as it contends in the alternative. Directly on point are STB Finance Docket No. 34258, North Carolina State Ports Authority–Acquisition Exemption–North Carolina Ports Railway Commission, served October 31, 2002, and Finance Docket No. 31971, South Orient Railroad Company, Ltd.–Acquisition and Operation Exemption–Line of The Atchison, Topeka and Santa Fe Railway Company, served September 2, 1992. In the former proceeding, the protestants contended, among other things, that, since the easement grants to the operating railroads were not permanent and unrestricted, the

State agency acquiring the tracks and other properties retained a residual common carrier obligation, and, hence, the transaction was subject to the Board's approval . The Board disagreed and found that the operating railroads assumed the entirety of the common carrier obligations and that the State agency, notwithstanding its acquisition of the tracks and other properties, "will not hold itself out to provide rail service." In the latter proceeding, the selling railroad's franchise to render common carrier railroad service was conveyed to the South Orient Railroad Company, Ltd., while its tracks and other properties were conveyed to the South Orient Rural Rail Transportation District. In concluding that the District required no approval from it to acquire the tracks and other properties, the Interstate Commerce Commission accepted the parties' representation that the District never would operate or have the right to operate a railroad over the railroad lines. Thus, neither the North Carolina State Ports Authority nor the South Orient Rural Rail Transportation District was found to have a residual common carrier obligation such as would have required the agency's approval of their asset acquisitions. So, too, Venice, by acquiring the McKinley Bridge and the elevated trestles affording access to it, did not acquire a residual common carrier obligation, which by its Notice of Exemption it purports to want to abandon.

7. Although the lessor of a railroad line has been held to have a residual common carrier obligation, requiring it to resume rendering service upon the termination of the lease, Hoboken Rail Road, Whse. & S.S. Connecting Co. Operation, 257 I.C.C. 739, 744 (1944); Livestock Terminal Service Co. Abandonment, 257 I.C.C. 1, 7 (1944), no residual obligations exists when the leased property is not a railroad line. Wisconsin Cent. Ltd. V. Surface Transp. Bd., 112 F.3d. 881 (7<sup>th</sup> Cir. 1997). Venice never having been in possession of a railroad line, the termination of

the lease by the N&W occasioned no reversion of a common carrier obligation to Venice.

8. Venice's Notice of Exemption is misleading in suggesting that Venice simply is acquiescing in Madison County Transit's effort acquire the right-of-way between Branch Street Yard in St. Louis and McKinley Junction, pursuant to the National Trails System Act., 16 U.S.C. 1247(d). To the contrary, the proposed transaction is nothing more than a contrivance to secure for Madison County Transit access to and from St. Louis for its broad network of rail banked rights-of-way, some of which already are being used as recreational trails and others of which remain to be developed, possibly for light rail operations, if the ambitions of Madison County Transit are to be realized.

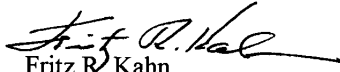
WHEREFORE, Terminal Railroad Association of St. Louis seeks reconsideration of the Board's Decision to accept the Notice of Exemption of the City of Venice and asks that the Notice of Exemption be rejected for containing false or misleading information.

Respectfully submitted,

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

By its attorneys,

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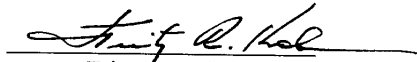
  
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Washington, DC 20036-1601  
Tel.: (202) 263-4152

Dated: January 20, 2004.

CERTIFICATE OF SERVICE

I certify that I this day have served copies of the foregoing Petition for Reconsideration of Terminal Railroad Association of St. Louis upon the City of Venice and Madison County Transit by facsimile transmitting copies thereof to their representatives.

Dated at Washington, DC, this 20th day of January 2004.

  
Fritz R. Kahn