

BALL JANIK LLP

A T T O R N E Y S

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WASHINGTON, D.C. 20005

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TELEPHONE 202-638-3307
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June 24, 2004

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BY HAND DELIVERY

ENTERED
Office of Proceedings

The Honorable Vernon Williams
Surface Transportation Board
1925 K Street, N.W., Suite 700
Washington, DC 20423-0001

JUN 24 2004

Part of
Public Record

Re: Finance Docket No. 34503, Timber Rock Railroad, Inc. -- Lease
Exemption -- The Burlington Northern and Santa Fe Railway
Company

Dear Secretary Williams:

Attached for filing are the original and ten copies of a Verified Notice of Exemption under 49 C.F.R. 1150.41 and a check covering the \$1,400.00 filing fee. Also enclosed is a 3.5-inch diskette formatted for WordPerfect containing the Notice and Summary.

Please time and date stamp the extra copy of the Notice of Exemption and return it with our messenger.

If you have any questions, please contact me.

Sincerely,



Karl Morell

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JUN 24 2004

**SURFACE
TRANSPORTATION BOARD**

Enclosures

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**SURFACE
TRANSPORTATION BOARD**

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34503

TIMBER ROCK RAILROAD, INC.
--LEASE EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41, Et Seq.

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SURFACE
TRANSPORTATION BOARD

KARL MORELL
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
TIMBER ROCK RAILROAD, INC.

Dated: June 24, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34503

TIMBER ROCK RAILROAD, INC.
--LEASE EXEMPTION--
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1150.41, Et Seq.

Timber Rock Railroad, Inc. ("TRRR"), a Class III rail carrier, files this Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart E--Exempt Transactions Under 49 U.S.C. 10902, to permit TRRR to lease 117.82 miles of rail lines from The Burlington Northern And Santa Fe Railway Company ("BNSF"). As part of this transaction, TRRR will also acquire incidental trackage rights over 54.72 miles of BNSF rail lines in order to interchange traffic with BNSF at Somerville and Beaumont, TX.

In support of this Notice of Exemption, TRRR submits the following information as required by 49 C.F.R. § 1150.43:

- (a) Full name and address of applicant:

Timber Rock Railroad, Inc.
315 West 3rd Street
Pittsburg, Kansas 66762

(b) Applicant's Representative:

Karl Morell
Of Counsel
BALL JANIK LLP
Suite 225
1455 F Street, N.W.
Washington, DC 20005
(202) 638-3307

(c) Statement of Agreement:

TRRR has entered into an agreement with BNSF for the lease of the rail lines and acquisition of the incidental trackage rights.

(d) The operator of the property:

TRRR will be the operator of the property.¹

(e) Summary of proposed transaction:

(1) The name and address of the railroad leasing the subject property is:

The Burlington Northern And Santa Fe Railway Company
2600 Lou Menk Drive
Fort Worth, Texas 76131

(2) TRRR's lease of the rail lines is expected to be consummated on or shortly after July 3, 2004.

(3) The rail lines being leased from BNSF by TRRR are located as follows:

(1) between Milepost 4.5, near Beaumont, TX, and Milepost 21.8, near Silsbee, TX; (2) between Milepost 52.5, near Dobbin, TX, and Milepost 152.56, at Silsbee, TX; and (3) between Milepost 0.5 and Milepost 0.96, near Kirbyville, TX. As part of the lease of these lines, TRRR will also

¹ BNSF is retaining the right to operate certain overhead trains over the lines being leased by TRRR.

acquire incidental overhead trackage rights: (1) between Milepost 4.5, near Beaumont, TX, and Milepost 2.28, at Beaumont, TX; and (2) between Milepost 52.5, near Dobbin, TX, and Milepost 144.0, on the BNSF Galveston Subdivision, at Somerville, TX, for the purpose of interchanging traffic with BNSF.

(4) The length of the rail lines being leased is 117.82 miles and the length of the lines over which TRRR is acquiring incidental trackage rights is 54.72 miles.

(f) A map of the rail lines being leased and the rail lines over which TRRR is acquiring incidental overhead trackage rights is attached as Exhibit A.

(g) TRRR hereby certifies that TRRR's projected revenues as a result of this transaction will not result in TRRR becoming a Class II or Class I rail carrier. TRRR's current annual revenue exceeds \$5 million. Consequently, TRRR has complied with the notice requirements of 49 C.F.R. § 1150.42(e), and certified its compliance to the Board on May 4, 2004. A copy of TRRR's letter is attached as Exhibit B.

A caption summary, as required by 49 C.F.R. § 1150.44, is attached.

ENVIRONMENTAL AND HISTORIC IMPACTS

TRRR is leasing the lines from BNSF for continued rail operations. Further Board approval is required for TRRR to discontinue any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

TRRR's lease and operation of the rail lines will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on any segment of the line; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day. TRRR's lease and operation of the rail lines will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Karl Morell", written over a horizontal line.

KARL MORELL

Of Counsel

BALL JANIK LLP

Suite 225

1455 F Street, N.W.

Washington, DC 20005

(202) 638-3307

Attorneys for:

TIMBER ROCK RAILROAD, INC.

Dated: June 24, 2004

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

FINANCE DOCKET NO. 34503

TIMBER ROCK RAILROAD, INC.

--LEASE EXEMPTION--

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Timber Rock Railroad, Inc., a Class III rail carrier, has filed a notice of exemption to lease from The Burlington Northern And Santa Fe Railway Company ("BNSF") the rail lines located: (1) between Milepost 4.5, near Beaumont, Texas, and Milepost 21.8, near Silsbee, Texas; (2) between Milepost 52.5, near Dobbin, Texas, and Milepost 152.56, at Silsbee, Texas; and (3) between Milepost 0.5 and Milepost 0.96, near Kirbyville, Texas. In conjunction with the lease of the rail lines, TRRR will acquire incidental overhead trackage rights over BNSF's rail lines located: (1) between Milepost 4.5, near Beaumont, Texas, and Milepost 2.28, at Beaumont, Texas; and (2) between Milepost 52.5, near Dobbin, Texas, and Milepost 144.0, on the BNSF Galveston Subdivision, at Somerville, Texas.

Comments must be filed with the Board and served on Karl Morell, Of Counsel, BALL JANIK LLP, Suite 225, 1455 F Street, N.W., Washington, DC 20005, (202) 638-3307.

This notice is filed under 49 C.F.R. 1150.41. If the notice contains false or misleading information, the exemption is void ab initio. The filing of a petition to revoke will not automatically stay the transaction.



BALL JANIK LLP

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WASHINGTON, D.C. 20005

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TELEPHONE 202-638-3307
FACSIMILE 202-783-6947



kmorell@bjllp.com

KARL MORELL

May 4, 2004

EXHIBIT B

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Suite 715
Washington, DC 20423-0001

Re: Finance Docket No. 34503, Timber Rock Railroad, Inc. – Lease Exemption
– The Burlington Northern And Santa Fe Railway Company

Dear Secretary Williams:

Timber Rock Railroad, Inc. ("TRRR"), hereby certifies that on May 2, 2004, TRRR had posted the attached Notice at the workplace of the employees on the rail line that is the subject of this transaction and on May 3, 2004, TRRR served a copy of the Notice on the national offices of all labor unions with employees on the affected line.

Please time and date stamp the extra copy of this letter and return it with our messenger.

If you have any questions regarding this matter, please contact me.

Sincerely,

Karl Morell

Enclosure

NOTICE

Timber Rock Railroad, Inc. ("TIBR"), a Texas Corporation, will be leasing from The Burlington Northern And Santa Fe Railway Company ("BNSF") the rail lines located: (1) between Milepost 4.5, near Beaumont, Texas, and Milepost 21.8, near Silsbee, Texas; (2) between Milepost 52.5, near Dobbin, Texas, and Milepost 152.56, at Silsbee, Texas; and (3) between Milepost 0.5 and Milepost 0.96, near Kirbyville, Texas. TRRR will also acquire overhead trackage rights: (1) between Milepost 4.5 and Milepost 2.28, at Beaumont, Texas and (2) between Milepost 52.5, at Dobbin, Texas, and Milepost 144.0, on the BNSF Galveston Subdivision, at Somerville, Texas.

As a result of the lease of the BNSF lines, TIBR expects to have employment opportunities in the following areas:

Transportation Specialists:

Approximately 19 positions in the following locations: Silsbee and Conroe, Texas. These positions require the following minimum skills and/or qualifications:

- Transportation Specialist I (10 positions).
Must have at a minimum 1-year experience as a conductor/brakeman, or equivalent training, from an accredited Railway training course. Must possess a valid driver's license, with a clean record. Must be able to pass color vision screening, have Qualifications on the General Code of Operating Rules (GCOR) and have passed a written test in the past 18 months. Must be able to demonstrate, by written test, understanding of Railroad Safety, operating rules, airbrake and hazardous materials handling rules. Individual must also be able to effectively use a radio, as per GCOR regulations, and ensure all applicable track warrant and bulletin information is in place, as per GCOR TWC territory regulations.
- Transportation Specialist II (9 positions).
Must possess the skills/qualifications for Transportation Specialist I, plus the following:
At least 1 year experience as a Locomotive Engineer. Must possess a valid Engineer's certificate issued by a program in compliance with 49 CFR Part 240. Must be able to meet all hearing and vision requirements of 49 CFR Part 240. Must have an understanding of air brake and mechanical systems of a train and locomotives, and pass a written test to verify competency.

The most qualified candidates will be selected from the available pool of applicants without regard to race, creed, color, religion, national origin, sex, age, marital status, disability or veteran status. The selection criteria will be job-related skills and attributes as outlined above. Successful candidates must have a stable work record and exhibit safe work practices. The

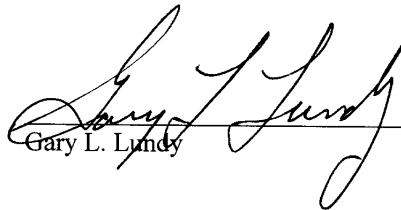
ability to work in a team environment with a focus on customer service is critical. Applicants must be able to read and comprehend regulations and instructions in English, as well as possess good oral communication skills. Successful applicants will be required to pass a pre-employment drug and alcohol screen and complete a medical questionnaire. Every employee is an at-will employee. All employees are expected to know and abide by the standard code of Employee Conduct.

Timber Rock Railroad, Inc.
315 West 3rd Street
Pittsburg, Kansas 66762
(620) 231-2230

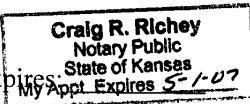
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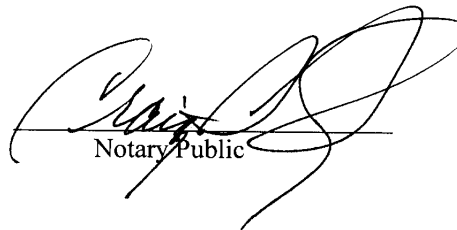
STATE OF KANSAS)
)
COUNTY OF CRAWFORD) ss.

I, Gary L. Lundy, being duly sworn depose and state that I am Executive Vice President, of the Timber Rock Railroad, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.


Gary L. Lundy

SUBSCRIBED AND SWORN TO before me this 18th day of June, 2004, in the County of Crawford, State of Kansas.

My Commission Expires: 


Notary Public