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THOMAS F. McFARLAND

April 20, 2005

By electronic mail

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

Re: Docket No. AB-792X, *Railroad Switching Service of Missouri, Inc. --
Abandonment Exemption -- Entire Rail Line in St. Louis, St. Louis County, MO*

Dear Mr. Williams:

Applicant Railroad Switching Service of Missouri, Inc. (RSSM) hereby moves that the Board deny the request for public use condition that was filed by the City of St. Louis, Missouri (the City) on February 25, 2005. This motion is based on the following.

On April 18, 2005, The Trust for Public Land (TPL) filed a request for railbanking and interim trail use of the subject right-of-way. On April 18, 2005, RSSM notified the Board that it is willing to negotiate with TPL for railbanking and interim trail use. Presumably, the Board's upcoming decision on an exemption for the proposed abandonment (due May 2, 2005) will contain a Certificate of Interim Trail Use (CITU) or Abandonment. In view of contractual commitments between RSSM and TPL, it is virtually certain that the subject right-of-way will be conveyed to TPL for railbanking and interim trail use.

In those circumstances, the City's request for public use condition does not satisfy one element of the four-part test for public use conditions in 49 C.F.R. § 1152.28(a)(2), i.e., "the public importance of the condition." Conveyance of the right-of-way to TPL would be for a public purpose, i.e., trail use. If a public use condition were to be imposed for the benefit of the City in addition to a CITU for the benefit of TPL, the public use condition could prevent conveyance of the right-of-way to TPL for railbanking and interim trail use until the end of the 180-day period of the public use condition. Thus, a public use condition could materially delay the public benefits associated with conveyance of the right-of-way to TPL for trail use. Such a conveyance for trail use would be likely to occur shortly after the effectiveness of the exemption for abandonment unless it were to be delayed as a result of imposition of a public use condition.

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Consequently, the Board should decline to impose the public use condition requested by the City.

Counsel for the City is being served with a copy of this motion in an expeditious manner.

Very truly yours,

/s/

Thomas F. McFarland

Attorney for Railroad Switching

Service of Missouri, Inc.

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