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November 9, 2005



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

215 127
Re: *STB Docket No. AB-6 (Sub. No. 430X) BNSF Railway Company—
Abandonment Exemption—in Oklahoma County, OK*

215 128
*STB Docket No. AB-1040X, Stillwater Central Railroad, Inc—
Discontinuance of Service Exemption—in Oklahoma County, OK*

Dear Mr. Williams,

Enclosed please find an original and 10 copies of Joint Reply to Protests.

Very truly yours,

Sidney L. Strickland, Jr.
Attorney for BNSF Railway Company

ENTERED
Office of Proceedings

NOV 10 2005

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



**BNSF RAILWAY COMPANY --
ABANDONMENT EXEMPTION --
IN OKLAHOMA COUNTY, OK**

**DOCKET NO. AB-6
(SUB-NO. 430X)
215127**

**STILLWATER CENTRAL RAILROAD,
INC. – DISCONTINUANCE OF SERVICE
EXEMPTION – IN OKLAHOMA
COUNTY, OK**

**DOCKET NO. AB-1040X
215128**

JOINT REPLY TO PROTESTS

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2650 Lou Menk Drive
P.O. Box 96157
Fort Worth, TX 76161-0057

STILLWATER CENTRAL
RAILROAD, INC
123 N. Depot
Cherryvale, KS 67335

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Attorney for BNSF Railway Company

Attorney for Stillwater
Central Railroad, Inc.

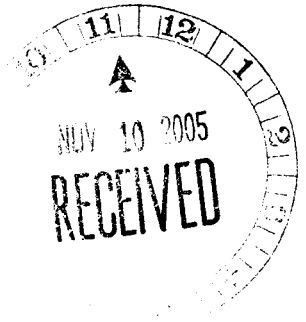
DATE FILED: November 9, 2005

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



**BNSF RAILWAY COMPANY --
ABANDONMENT EXEMPTION --
IN OKLAHOMA COUNTY, OK**

**DOCKET NO. AB-6
(SUB-NO. 430X)**

**STILLWATER CENTRAL RAILROAD,
INC. – DISCONTINUANCE OF SERVICE
EXEMPTION – IN OKLAHOMA
COUNTY, OK**

DOCKET NO. AB-1040X

JOINT REPLY TO PROTESTS

BNSF RAILWAY COMPANY (“BNSF”) and the STILLWATER CENTRAL RAILROAD, INC. (“SLWC”) (“Applicants”) jointly file this Reply to Protests.

On September 23, 2005, Applicants filed a Verified Notice of Exemption under 49 CFR 1152.50 for BNSF to abandon and SLWC to discontinue service over a rail line that extends between Milepost 539.96 and Milepost 542.91 in Oklahoma City, Oklahoma, within Oklahoma County, Oklahoma (the “Line”). The Notice was published in the Federal Register on October 13, 2005. The Federal Register Notice, among other things, stated:

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on November 12, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues, formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 24, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 2, 2005, with: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. [Footnotes omitted.]

On October 18, 2005, the Board issued the Environmental Assessment (“EA”) in these proceedings. The EA noted, among other things, “[t]he City of Oklahoma has submitted comments stating that the right-of-way proposed for abandonment is being evaluated by the city for use as a future rail link between the central business district and the regional airport and Federal Aviation Administration Center.”

On November 7, 2005, Michael Richards of Bio-Energy Wellness Center (“Mr. Richards”) filed what was styled as a protest and opposition in these proceedings. Mr. Richards contends the Line does not qualify for a two-year out-of-service abandonment because SLWC uses the line for specified eastward and westward rail movements in the area. (See Letters dated November 4 and November 5, 2005, page 1). Mr. Richards also requests a public hearing and investigation.

On November 7, 2005, Al Lindley, State Representative, District 93, House of Representatives, State of Oklahoma (“Representative Lindley”) filed what was styled as an opposition to approval of the proposed “railway abandonment”. Representative Lindley opposes the abandonment because it will destroy “the only existing direct rail link from Will Rogers World Airport and much of the Southwestern Oklahoma to downtown Oklahoma City” and because “the Oklahoma Department of Transportation which is plainly driving the abandonment request would re-route existing BNSF line rail traffic to at-grade crossings on Robinson and Walker Streets.” (See Letter dated November 7, 2005).

On November 9, 2005, attorney Fritz R. Kahn, filed what was styled as a “Petition of Bio-Energy Wellness Center and North American Transportation Institute to Have Notice Declared Null and Void”. Attorney Kahn asserts the Notice of Exemption should

be declared null and void *ad initio*, because the Line is operated by SLWC and has been used to handle local traffic within the past two years. Attorney Kahn submitted no supporting evidence beyond his bald assertions.

REPLY

Mr. Richards and Representative Lindley have misconstrued the Notice of Exemption in these proceedings. The Notice correctly indicated that there has been no local traffic over the Line for a period of at least two years, and that any **overhead** traffic on the Line can be re-routed over other lines. The joint filing clearly indicated SLWC would *discontinue* its existing overhead service over the Line and that the overhead service would be re-routed. Indeed, Applicants have submitted to the Board all information required under the Board's rules. Mr. Richards and Representative Lindley fail to understand the difference between local traffic movements and overhead traffic movements that can be rerouted. Attorney Kahn's assertions that the Line is operated by SLWC and has been used to handle local traffic within the past two years does not clarify the fact that his client is confused as to the difference between overhead traffic movements by SLWC and local traffic movements by BNSF. If there is evidence of local movements by BNSF, such evidence should have been submitted. Mere allegations are not an evidentiary submission.

As the Board well knows, the rerouting of overhead traffic is a matter within the managerial discretion of the railroad and does not require Board approval. *See, e.g., Futurex Industries, Inc. v. ICC*, 897 F. 2d 866 (7th Cir. 1990); *People of State of Illinois v. ICC*, 698 F. 2d 868, 873 (7th Cir. 1983) ("This policy reflects the well-established principle that the routing of overhead traffic and the selection of alternative routes for the

handling of such traffic is a matter of managerial discretion."); *Central Michigan Ry. Co. – Abandonment*, 7 I.C.C. 2d 557 (1991); *Southern Pacific Transp. Co. – Abandonment*, 360 I.C.C. 138 (1979). Consequently, overhead traffic that can be rerouted is not an issue that affects the outcome of abandonment proceedings and no Board authority is required for the rerouting of overhead traffic.

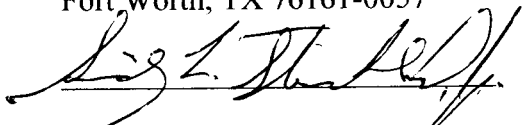
Finally, as noted in the Federal Register Notice, petitions to reopen or requests for public use conditions should have been filed by November 2, 2005. To the extent they seek to reopen or seek a public use condition, Mr. Richards' and Representative Lindley's filings are out of time.

CONCLUSION

Mr. Richards and Representative Lindley have failed to demonstrate the jointly filed Notice of Exemption contained false or misleading information. They simply misunderstand the difference between local and overhead movements and that the rerouting of overhead movements is permissible under the Board's rules governing the abandonment of out-of-service rail lines. Consequently, Applicants respectfully urge the Board to deny the requests.

Respectfully submitted,

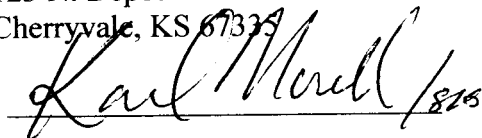
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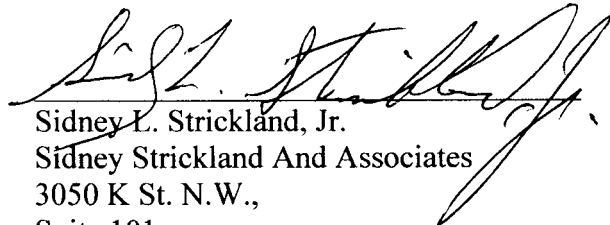
DATE FILED: November 9, 2005

CERTIFICATE OF SERVICE

BNSF Railway Company and the Stillwater Central Railroad, Inc., ("Applicants") by and through their authorized representative, Sidney L. Strickland, Jr., and Karl Morell, respectively, certify that on November 9, 2005, Applicants sent copies of the foregoing Joint Reply to Protests by first class mail to the following individuals and/or entities:

Honorable Al Lindley
House Of Representatives -
District 93
2300 N. Lincoln Blvd. - State
Capital Bldg. Room 328A.
Oklahoma City, OK 73105

Richards, Michael
Bio-Energy Wellness Center
3021 N Classen Blvd.
Oklahoma City, OK 73106



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