

LAW OFFICES
FRITZ R. KAHN, P.C.
EIGHTH FLOOR
1920 N STREET, N.W.
WASHINGTON, D.C. 20036-1601

(202) 263-4152
FAX (202) 331-8330
e-mail: xiccg@worldnet.att.net

ORIGINAL



December 23, 2005

VIA HAND DELIVERY - RETURN COPY

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

Dear Secretary Williams:

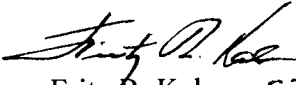
Enclosed for filing in each of STB Dockets No. AB-6 (Sub-No. 430X), BNSF Railway Company—Abandonment Exemption—In Oklahoma County, OK, and No. AB-1040X, Stillwater Central Railroad, Inc.—Abandonment Exemption—In Oklahoma County, OK, are the original and ten copies of the Redacted - Public Version and of the Highly Confidential - Filed Under Seal Version of the Statement of Bio-Energy Wellness Center and North American Transportation Institute in Support of their Petition to Have Applicants' Notice Declared Null and Void.

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

Service of this letter and the Statements has been effected by faxing and mailing copies to the railroads' counsel.

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,


Fritz R. Kahn OFFICE OF THE SECRETARY

enc.

cc: Sidney L. Strickland, Jr., Esq.
Karl Morell, Esq.

DEC 23 2005
Public Record

ORIGINAL

REDACTED

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Docket No. AB-6 (Sub-No. 430X)

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

STB Docket No. AB-1040X

STILLWATER CENTRAL RAILROAD, INC.
- ABANDONMENT EXEMPTION -
IN OKLAHOMA COUNTY, OK

PETITIONERS' STATEMENT
IN SUPPORT OF THEIR PETITION TO HAVE
APPLICANTS' NOTICE DECLARED NULL AND VOID

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Attorney for

BIO-ENERGY WELLNESS CENTER
NORTH AMERICAN TRANSPORTATION INSTITUTE

Dated: December 23, 2005



215427

OFFICE OF THE SECRETARY
U.S. DEPARTMENT OF TRANSPORTATION

Public Records

REDACTED

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Docket No. AB-6 (Sub-No. 430X)

BNSF RAILWAY COMPANY
– ABANDONMENT EXEMPTION –
IN OKLAHOMA COUNTY, OK

STB Docket No. AB-1040X

STILLWATER CENTRAL RAILROAD, INC.
– ABANDONMENT EXEMPTION –
IN OKLAHOMA COUNTY, OK

PETITIONERS' SUPPLEMENTAL STATEMENT
IN SUPPORT OF THEIR PETITION TO HAVE
APPLICANTS NOTICE DECLARED NULL AND VOID

Petitioners, Bio-Energy Wellness Center and North American Transportation Institute, on November 9, 2005, filed their Petition to have the Verified Notice of Exemption, filed by Applicants, BNSF Railway Company and Stillwater Central Railroad, on September 23, 2005, declared null and void *ab initio*, because it contains false and misleading information.

1. Bio-Energy Wellness Center and North American Transportation Institute are organizations situated in Oklahoma City concerned about the proposed abandonment of the subject railroad line, extending between Milepost 542.91 and Milepost 539.96, and the relocation of Crosstown Interstate Highway I-40 for which a portion of the right-of-way of the

railroad line proposed for abandonment is being sought by the Oklahoma Department of Transportation.

2. Petitioners believe that the Applicants' Notice of Exemption contained false or misleading information in stating that the railroad line had not handled local traffic in the preceding two years.. Petitioners, based upon their observations and their conversations with personnel of the companies, understand that

are shippers situated on, or accessed via, the railroad line proposed to be abandoned and which between September 24, 2003, and September 23, 2005, were served by BNSF Railway Company and/or Stillwater Central Railroad, Inc.

are copies of the map of the railroad line proposed for abandonment taken from Applicants' Notice of Exemption and Mapquest maps of the foregoing businesses' addresses, and that they are situated on, or accessed via, the subject is evident. The companies insist that their identities not be made known because of the possible retribution of the Oklahoma Department of Transportation and the business or individuals favoring the relocation of the Crosstown Interstate Highway I-40 for which a part of the right-of-way of the line proposed for abandonment is being sought.

2. Petitioners believe that the Applicants' Notice of Exemption contained false and misleading information in excluding from local traffic handled on the railroad line proposed for abandonment shipments which BNSF Railway Company and/or Stillwater Central Railroad, Inc., between September 24, 2003, and September 23, 2005, moved to or from the ready-mix cement plants immediately to the west of Milepost 542.91 and to or from the railroad yard immediately

to the east of milepost 539.96 and characterized such traffic to be overhead traffic capable of being diverted and, hence, irrelevant for the purpose of whether the subject line has been out of service for two years or longer, within the meaning of 49 C.F.R. 1152.50.

3. Petitioners believe that the Applicants' Notice of Exemption contained false or misleading information in that the in the accompanying Environmental Report the Applicants stated that BNSF Railway Company on December 29, 2004, had leased this trackage to Stillwater Central Railroad , Inc. In fact, pursuant to the Board's Decision in STB Finance Docket No. 34610, Stillwater Central Railroad, Inc.—Lease Exemption—The Burlington Northern and Santa Fe Railway Company, served January 19, 2005, only a couple of small segments of the railroad line proposed to be abandoned, between Milepost 542.91 and Milepost 542.0 and between Milepost 540.0 and Milepost 539.96 were leased by BNSF Railway Company to Stillwater Central Railroad, Inc.

4. Petitioners believe that the Applicants's Notice of Exemption contained false or misleading information in that Mr. Richard A. Batie of BNSF Railway Company in his Verification and Certification could not have attested that "no local traffic has moved on the line for at least two (2) years prior to the date hereof," because after December 29, 2004, he had no knowledge of what services were rendered by Stillwater Central Railroad, Inc., the lessee of segments of the line proposed for abandonment, just as Mr. Arthur E. McKechnie III of Stillwater Central Railroad, Inc., in his Verification and Certification could not have attested that "no local traffic has been handled to or form any customer over the line for at least two (2) years prior to the date hereof," because before December 29, 2004, he had no knowledge of what services had been performed on the line proposed for abandonment by BNSF Railway Company.

5. Petitioners believe that the Applicants' Notice of Exemption contained false and misleading information in that it is an inappropriate use of the two-year out-of-service class exemption of 49 C.F.R. 1152.50 for an operator of a line proposed for abandonment who has not been in possession of the line for two years' time to tack the experience of a prior operator of the line in order to arrive at the conclusion that the line has been out of service for two years or longer. See, Tulare Valley R. Co.-Aban.-Kings & Tulare County, CA, 9 I.C.C.2d 1205 (1993).

WHEREFORE, Petitioners, Bio-Energy Wellness Center and North American Transportation Institute, ask that the Notice of Exemption of BNSF Railway Company and Stillwater Central Railroad, Inc., filed September 23, 2005, be declared null and void *ab initio*.

Respectfully submitted,

BIO-ENERGY WELLNESS CENTER
NORTH AMERICAN TRANSPORTATION INSTITUTE

By their attorney,

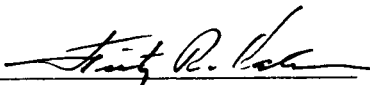

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Dated: December 23, 2005

CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing Statement upon counsel for BNSF Railway Company and Stillwaater Central Railroad, Inc., by facsimile transmitting and by mailing copies thereof by prepaid first-class mail to their counsel, Sidney L. Stickland, Esq., and Karl Morell, Esq.

Dated at Washington, DC, this 23d day of December 2005.


Fritz R. Kahn