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ORIGINAL

March 7, 2006

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

Part of
Public Record

**RE: Ex Parte No. 647, Class Exemption for Expedited
Abandonment Procedure for Class II and Class III
Railroads**

Dear Secretary Williams:

Yesterday, I filed comments in the above-captioned proceeding on behalf of six class II and III short line railroads. I am enclosing an original and ten additional copies of corrected pages 7, 11, and 15 of the filing as well as Exhibit A.

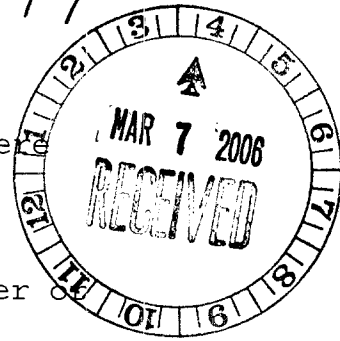
Please date stamp and return one copy of this letter. If you have any questions, please call or email me.

Sincerely yours,

John D. Heffner

Ex Part No. 647

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not followed this precedent consistently. In fact, there are cases where the Board has approved abandonment petitions with minimal evidence over substantial shipper or government agency opposition and cases where the Board has denied petitions for lines where the economics were clearly marginal although the evidentiary showing was far less than that required for an application. Compare Sierra Pacific Industries-Abandonment Exemption-in Amador County, CA. STB Docket No. AB-512X (served February 25, 2005) with San Pedro Railroad Operating Company, LLC-Abandonment Exemption-in Cochise County, AZ, STB Docket No. AB-441 (Sub-No. 4X), served September 15, 2005. Thus, a short line railroad seeking abandonment authority is faced with the prospect that if it seeks that authority by an individual petition for exemption and the exemption is denied, it must - to use the board game *Monopoly* analogy of "go directly to jail, do not pass 'Go', and do not collect \$200" - start all over again.

Moreover, under exemption procedures (unlike those for a formal application) the abandoning railroad lacks the right to respond to a reply. That is significant because the Board could rely on a protestant's evidence that is clearly wrong or inaccurate without providing the railroad an opportunity to correct the record.

expression of intent" is required for an out of service abandonment. These disparate procedures must be very confusing to all but those few versed in the intricacies and folklore of STB abandonment practice and procedure. In addition, the minimal amount of time provided under 49 CFR 1152.27 to prepare an OFA and secure the requisite financial commitments can present a problem for some potential offerors, possibly discouraging some otherwise legitimate parties from making OFA's.¹²

Petitioners' proposal would correct this problem by providing that the OFA would be due 90 days after the Federal Register publication of the abandonment notice. Petitioners' proposal would require a railroad seeking to abandon to provide certain types of information in its public notice and would require more detailed information to be put in an information "packet" available upon

¹² While Board precedent provides that "offers need not be detailed" and that there are numerous ways to establish financial responsibility, the short timeframes contained in the current rules have a chilling effect on the ability of some political subdivisions, shipper groups, and economic development agencies to submit offers. Where a state's ability to fund an acquisition is dependent upon legislation or legislative appropriations, the current short time frames make such efforts difficult or impossible. One solution might be for the Board to recommend to the Congress legislation and short term funding to be administered by the United States Department of Transportation to allow states to preserve lines with "strategic significance" until states (or other public agencies) could act to acquire them. Similarly, most lending institutions will not provide a loan commitment until they have had sufficient time to analyze the transaction and collateral and obtained appropriate approvals.

2. Should the Board shorten to one year the period of no service for an "out of service" line available for abandonment under the abandonment class exemption of 49 CFR 1152.50.
3. Would shortlines' abandonment needs be met if the Board adopted a procedure allowing a carrier to abandon a line without further delay if no protest was received within 30 days' of filing the abandonment.

The Parties do not have strong feelings with regard to the Board's question about a minimum "holding period" before a newly abandoned line can be abandoned. Nevertheless, they are aware of situations where short lines have acquired lines only to have the principal customer go out of business soon thereafter. A short line railroad should not be prevented from seeking abandonment authority under such a situation.

The Parties applaud the Board's suggestion that it might consider expanding the "out of service" abandonment exemption to cover lines over which no service has been provided for one year.

The Parties' final concern involves actively used lines with small amounts of traffic. More specifically, they are concerned about lines that have sufficient traffic

EXHIBIT A

Short Line Railroad Parties

Delta Southern Railroad Inc. ("DSR"). DSR is a class III short line railroad headquartered in Tullalaha, LA. Originally established in 1989 and acquired by its present owners in 1999, DSR owns and operates approximately 150 miles of former Missouri Pacific Railroad track in Southeastern Arkansas and adjoining Louisiana. On two occasions DSR has obtained Board (or Interstate Commerce Commission) permission to abandon track segments, utilizing both the notice of exemption and petition for exemption procedures.

Housatonic Railroad Company, Inc. ("HRRRC"). HRRRC is a class III short line railroad with operational headquarters in Canaan, CT. It owns and operates two principal lines totaling about 150 miles (one north-south and one east-west) which cross at Canaan. Those lines serve western Connecticut, western Massachusetts, and an adjoining area in eastern New York. Originally established around 1990, HRRRC operates a series of lines owned by the Connecticut Department of Transportation and Metro North Commuter Railroad Company as well as lines formerly owned by and acquired by HRRRC from Consolidated Rail Corporation. HRRRC has sought and obtained exemptions permitting abandonment or discontinuance on a couple of occasions.

New York Cross Harbor Railroad Term. Corp. ("NYCH"). NYCH is a class III short line railroad with operational headquarters in Jersey City, NJ. Current management acquired majority control of the railroad in 2005. NYCH operates a rail car float across New York Harbor linking Brooklyn and Long Island with both CSX Transportation and Norfolk Southern Railroad in Jersey City, NJ. In addition, NYCH operates track along the Brooklyn waterfront near the Bay Ridge section serving about 8 industries. NYCH also serves several customers at its Jersey City yard. NYCH has yet to utilize the abandonment provisions of the ICC Termination Act although it was the subject of an unsuccessful "adverse" abandonment request by the City of New York.

Permian Basin Railways ("Permian"). Founded in 2002, Permian is a Chicago-based short line railroad holding

company that owns 4 small western class III carriers acquired from RailAmerica, Inc. Those lines include the West Texas & Lubbock Railway, the Texas New Mexico Railroad, the Arizona Eastern Railway, and the San Luis & Rio Grande Railroad. These lines were formerly owned and operated by the BNSF Railway, Inc., and Union Pacific Corporation and their corporate predecessors. Permian has yet to seek any abandonment authority but, as its rail system grows, may have to abandon small segments here and there.

San Pedro Rail Operating Company ("SPROC"). SPROC is a small Arizona-based class III short line railroad. Organized in 2003, SPROC acquired a former Southern Pacific Railroad line that several previous short line companies had operated under the name "San Pedro & Southwestern." SPROC recently sought to abandon an unprofitable segment of this line, first unsuccessfully and then successfully. SPROC continues to provide service over the profitable segment of that railroad.

Wisconsin & Southern Railroad Co. ("WSOR"). WSOR is a Milwaukee-based class II regional railroad which operates a complex network of over 600 miles of track throughout central and southern Wisconsin and into Chicago via trackage rights. Originally established in 1980 from a remnant of the bankrupt Milwaukee Road, WSOR today operates a mixture of track that is state-owned, carrier-owned, and leased from CP Rail and Union Pacific Railroad as well as trackage rights over Canadian National (Wisconsin Central LTD) and Chicago commuter carrier METRA. WSOR has utilized the abandonment procedures several times to eliminate some out of service trackage.