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THOMAS F. MCFARLAND

August 13, 2009

By UPS overnight mail

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 100
Washington, DC 20024

225530

Re: Docket No. AB-1044, *Indiana Business Railroad, Inc. -- Adverse Discontinuance of Rail Service -- Portion of Norfolk Southern Railway Company's Rockport Branch*

Dear Ms. Quinlan:

Enclosed please find an original and 10 copies of a Petition For Partial Waiver Of Abandonment Regulations And For Exemptions, for filing with the Board in the above referenced matter.

Also enclosed is a check in the amount of \$1,800 for the filing fee.

Very truly yours,

Tom McFarland

Thomas F. McFarland
*Attorney for Indiana Business
Railroad, Inc.*

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**SURFACE
TRANSPORTATION BOARD**

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AUG 14 2009

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD



INDIANA BUSINESS RAILROAD, INC.)
-- ADVERSE DISCONTINUANCE OF)
RAIL SERVICE -- PORTION OF) DOCKET NO. AB-1044
NORFOLK SOUTHERN RAILWAY)
COMPANY'S ROCKPORT BRANCH)

**PETITION FOR PARTIAL WAIVER
OF ABANDONMENT REGULATIONS
AND FOR EXEMPTIONS**

INDIANA BUSINESS RAILROAD, INC.
123 Locust Street
Evansville, IN 47708

Petitioner

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Petitioner

DATE FILED: August 14, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

INDIANA BUSINESS RAILROAD, INC.	)	
-- ADVERSE DISCONTINUANCE OF	)	
RAIL SERVICE -- PORTION OF	)	DOCKET NO. AB-1044
NORFOLK SOUTHERN RAILWAY	)	
COMPANY'S ROCKPORT BRANCH	)	

**PETITION FOR PARTIAL WAIVER
OF ABANDONMENT REGULATIONS
AND FOR EXEMPTIONS**

Pursuant to 49 C.F.R. § 1152.24(e)(5) and 49 U.S.C. § 10502(a), INDIANA BUSINESS RAILROAD, INC. (IBR) hereby petitions for partial waiver of regulations governing railroad abandonments at 49 C.F.R. § 1152, Subpart C, and for exemptions from application of statutory provisions, in conjunction with an Application that IBR intends to file for adverse discontinuance of the federal authority of Norfolk Southern Railway Company (NS) to operate over a long-dormant segment of its Rockport Branch between Milepost 6.5, a short distance south of the plant of AK Steel Corporation near Chrisney and Milepost 0.0 at end of track in Rockport, a distance of 6.5 miles in Spencer County, Indiana ("the Chrisney-Rockport Line"). The abandonment would not include trackage serving the AK Steel plant.

BACKGROUND

Norfolk Southern's Rockport Branch extends south from Lincoln City, IN approximately 17 miles to terminus at Rockport, IN on the Ohio River. Attached to this Petition as Appendix 1 is a railroad map on which the Rockport Branch is shaded in yellow.

The area in Spencer County, Indiana in which the Rockport Branch is located is referred to locally as Lincolnland. In 1998, the Lincolnland Economic Development Corporation (LEDC) was instrumental in the location of a manufacturing facility of AK Steel Corporation (AK) on the Rockport Branch at a point a few miles south of Chrisney, IN. AK has provided substantial rail traffic for NS over the Rockport Branch.

It is approximately 6.5 miles between the AK plant and the southern terminus of the Rockport Branch at Rockport. That 6.5-mile line segment will be the subject of IBR's application for adverse abandonment. The proposed abandonment would not include trackage serving AK.

That 6.5-mile segment has been dormant for more than 10 years. The segment is overgrown with weeds. In some locations, trees are growing in between the rails. The tracks have been paved over at some of the grade crossings on the segment. It would take a substantial expenditure for track and bridge rehabilitation in order to restore the segment to operable condition.

Evidence to be provided by LEDC and IBR in support of the application for adverse abandonment will show that opportunities for economic development on the 6.5-mile segment that would involve rail transportation of substantial volumes of traffic have been brought to the attention of NS, but NS has declined to cooperate in such development. A significant stumbling block to such economic development is, and has been, NS's policy and practice to require potential shippers and/or local communities to pay for the cost of track and/or bridge rehabilitation necessary to restore dormant rail lines to operable condition. Shippers and

STB LEXIS 298 at *6 (Docket No. AB-1036, decision served July 10, 2009), and decisions cited in note 4.

A. Waiver of Abandonment Regulations

1. **49 C.F.R. § 1152.21, Notice of Intent** - partial waiver is sought to permit filing of the Notice in the form shown in the attached Appendix 2 rather than the prescribed form which is inappropriate for an adverse discontinuance application.

2. **49 C.F.R. § 1152.20(a)(2)(i), Service of Notice on Significant Users** - waiver is sought because there are no significant users.

3. **49 C.F.R. § 1152.20(a)(3), Notice to be posted at all stations** - waiver is sought because there are no stations on the involved segment.

4. **49 C.F.R. § 1152.20(a)(2)(xii), Service of Notice on Labor Organizations** - waiver is sought because there are no employees on the involved segment, so no labor organizations would be affected by the proposed adverse discontinuance.

5. **49 C.F.R. § 1152.10 through 49 C.F.R. § 1152.14 and 49 C.F.R. § 1152.24(e)(1), and 49 C.F.R. § 1152.22(a)(5), System Diagram Map requirements** - waiver is sought because these regulations are not appropriate in an adverse discontinuance proceeding.

6. **49 C.F.R. § 1152.22(b) through 49 C.F.R. § 1152.22(d), Physical Condition of the Line** - waiver is sought because an applicant for adverse discontinuance does not have access to detailed information regarding the physical condition of the involved rail line segment.

7. **49 C.F.R. § 1152.22(i), Draft Federal Register Notice** - partial waiver is sought to permit filing of this Notice in the form shown in the attached Appendix 3 rather than the prescribed form, which is inappropriate for an adverse discontinuance application.

communities often lack the resources to do so, and consider it the legal obligation of the rail carrier to do so where there is a revived demand for rail transportation.

IBR is incorporated as a railroad company under Indiana law. It is not yet a rail carrier subject to Board jurisdiction. IBR is ready, willing, and able to respond to the rail-related economic development opportunities that NS has shunned. To that end, IBR has requested NS to lease the 6.5-mile segment for operation by IBR, but NS has refused to do so. Thus, while NS is unwilling to rehabilitate and operate the segment itself, it is also unwilling to allow IBR to rehabilitate and operate it. As a result, economic development on that segment has been stifled. IHB and LEDC firmly believe that public convenience and necessity require discontinuance of NS's rail service in those circumstances.

IBR has the power of eminent domain under Indiana law. IBR proposes to acquire the 6.5-mile segment by condemnation, and to file a notice of exemption with the Board for IBR's acquisition and operation of that segment. However, it is first necessary to obtain a Board order terminating the Federal authority of NS to operate over the segment. This Petition is a first step toward IBR's filing of an application for adverse abandonment of that Federal authority. It will be shown in that application that public convenience and necessity require termination of the operating authority that NS has refused to exercise, so that IBR can respond to the demand for rail transportation associated with economic development opportunities available through LEDC and others in the Lincolnland area.

Partial Waiver of Abandonment Regulations

In adverse discontinuance of service cases, the Board will waive inapplicable or unneeded abandonment regulations and exempt parties from the statutory provisions that underlie them.

City of Chicago -- Adverse Abandonment -- Chicago Terminal Railroad in Chicago, IL, 2009

8. **49 C.F.R. § 1152.29(e)(2), One Year Authorization Limit for Notice of Consummation of Abandonment** - waiver is sought because an applicant for adverse discontinuance does not have control over the timing of consummation until it obtains control of the property from the railroad, which may well take more than one year.

9. **49 C.F.R. § 1152.22(f), Environmental and Historic Report** - waiver is sought because rail service would be continued by IBR following discontinuance of service by NS.

10. **49 C.F.R. § 1152.29, Trail Use** - waiver is sought because trail use would not be appropriate on a right-of-way on which rail service has been adversely discontinued.

B. Exemptions from Statutory Provisions

1. **49 U.S.C. § 10904, Financial Assistance** - exemption is sought because a decision authorizing adverse discontinuance is not reconcilable with an offer of financial assistance for continued rail operation.

2. **49 U.S.C. § 10905, Public Use** - exemption is sought because a decision authorizing adverse discontinuance is not reconcilable with acquisition of the rail line for public use.

3. **49 U.S.C. § 10903(c)(2), System Diagram Map** - exemption is sought to correspond with waiver of SDM regulations.

4. **49 U.S.C. §§ 10903(a)(3)(B) and (a)(3)(D), Service and Posting of Notice of Intent** - exemption is sought to correspond with waiver of related regulation sought previously.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, the Board's abandonment regulations should be waived, and statutory provisions should be exempted, to the extent sought above.

Respectfully submitted,

INDIANA BUSINESS RAILROAD, INC.
123 Locust Street
Evansville, IN 47708

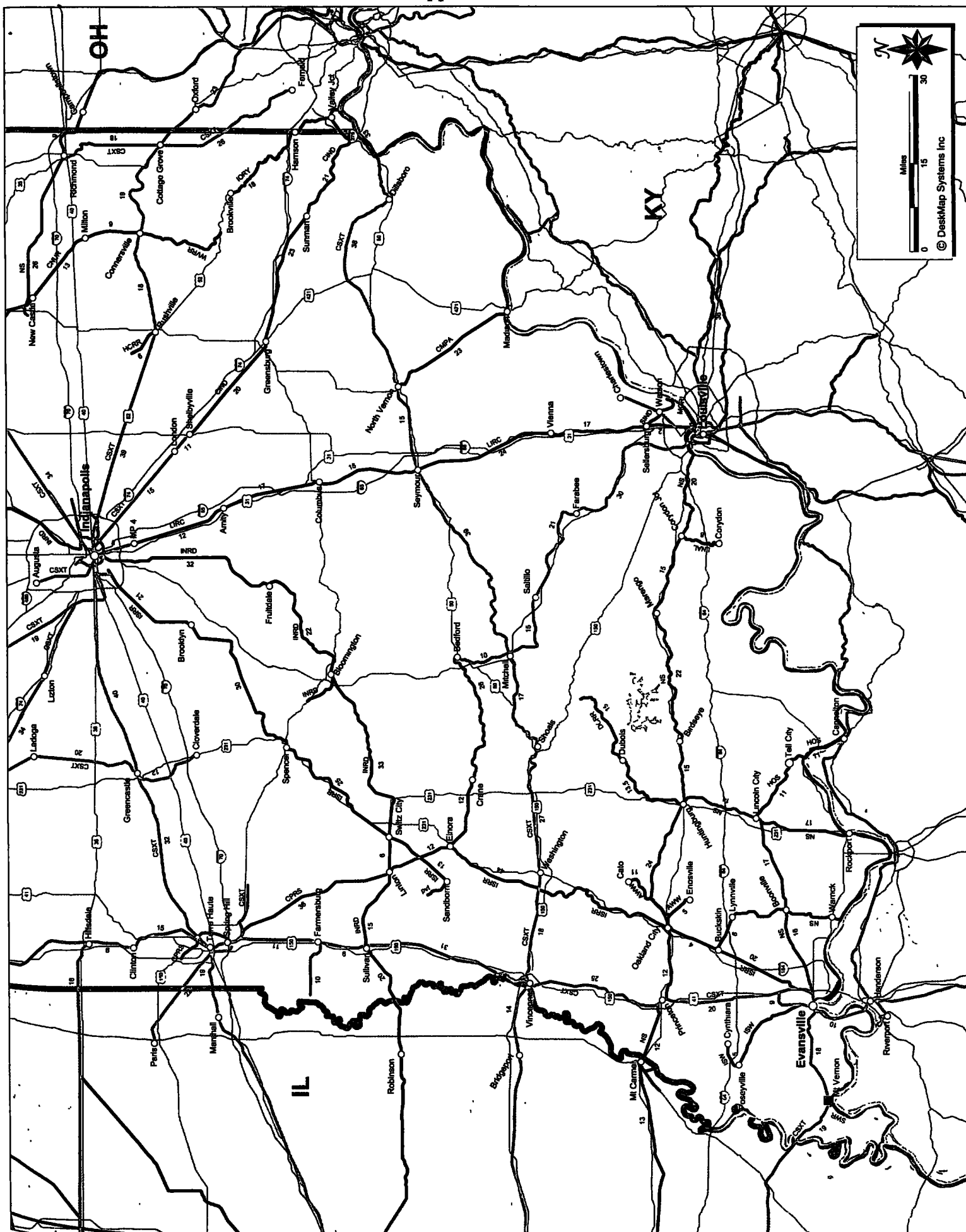
Petitioner

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
(312) 236-0204
(312) 201-9695 (fax)
mcfarland@aol.com

Attorney for Petitioner

DATE FILED: August 14, 2009



Draft Notice of Intent

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Docket No. AB-1044

**INDIANA BUSINESS RAILROAD, INC.
-- ADVERSE DISCONTINUANCE OF RAIL SERVICE --
PORTION OF NORFOLK SOUTHERN RAILWAY
COMPANY'S ROCKPORT BRANCH**

INDIANA BUSINESS RAILROAD, INC. (IBR) (hereinafter "Applicant") gives notice that on or about _____, 2009, it intends to file with the Surface Transportation Board ("the Board"), Washington, D.C. 20423, an application seeking adverse discontinuance of the rail service of Norfolk Southern Railway Company (NS) over a long-dormant segment of its Rockport Branch between Milepost 6.5, a short distance south of the plant of AK Steel Corporation near Chrisney, and Milepost 0.0 at the end of track in Rockport, a distance of 6.5 miles in Spencer County, Indiana (the Chrisney-Rockport Line). The affected railroad line is situated in U.S. Postal Zip Codes 47552, 47611, 47635 and 47637. The Line does not have stations. The reason for the proposed discontinuance is NS's failure and refusal to respond to requests for rail service in conjunction with rail-related industrial development opportunities along the rail line.

APPENDIX 2

There are no documents in IBR's possession that indicate that the Line contains federally granted rights-of-way. Any such documentation that might come into the County's possession will be made available promptly to those requesting it.

The application, when filed, can be viewed following its filing on the Board's webpage, www.stb.dot.gov, or a copy can be secured from IBR's counsel, whose name and address appear below. The application will include IBR's entire case for discontinuance. Any interested person, after the application is filed on or about _____, 2009, may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed discontinuance identifying it by the proceeding's docket number. These filings are due 45 days from the date of filing of the application. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed discontinuance, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application. Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 395 E Street, S.W., Suite 100, Washington, DC 20024, together with a certificate of service attesting that copies of the comments or protests

APPENDIX 2

have been served on Applicant's counsel in this matter, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, phone 312-236-0204, fax 312-201-9695, mcfarland@aol.com. Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the discontinuance proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after that application is filed.

Those parties filing protests to the proposed discontinuance should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Service at (202) 245-0230 or refer to the text of the discontinuance regulations at 49 C.F.R. § 1152.1, *et seq.*

Draft Federal Register Notice

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Docket No. AB-1044

**INDIANA BUSINESS RAILROAD, INC.
-- ADVERSE DISCONTINUANCE OF RAIL SERVICE --
PORTION OF NORFOLK SOUTHERN RAILWAY
COMPANY'S ROCKPORT BRANCH**

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There is no documentation in IBR's possession that indicates that the line contains federally granted rights-of-way. Any such documentation relating to this discontinuance in the

APPENDIX 3

Applicant's possession will be made available promptly to those requesting it. The application can be viewed on the Board's webpage, www.stb.dot.gov, or a copy can be secured from Applicant's counsel, whose name and address appear below. The Applicant's entire case for discontinuance was filed with the application.

Any interested person may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed discontinuance identifying it by the proceeding's docket number. These filings are due 45 days after the application is filed. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitted verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed discontinuance, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application.

Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 395 E Street, S.W., Suite 100, Washington, DC 20024, together with a certificate of service attesting that copies of the comments or protests have been served on Applicant's counsel in this matter, Thomas F.

APPENDIX 3

McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, phone 312-236-0204, fax 312-201-9695, mcfarland@aol.com. Written comments and protests must indicate the proceeding designation STB AB-1044.

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the discontinuance proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interest may appear.

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Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Service at (202) 245-0230 or refer to the text of the discontinuance regulations at 49 C.F.R. § 1152.1, *et seq.*

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2009, I served the foregoing document, Petition For Partial Waiver Of Abandonment Regulations And For Exemptions, by UPS overnight mail, on James R. Paschall, Esq., Senior General Attorney, Law Department, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510-2191.



Thomas F. McFarland