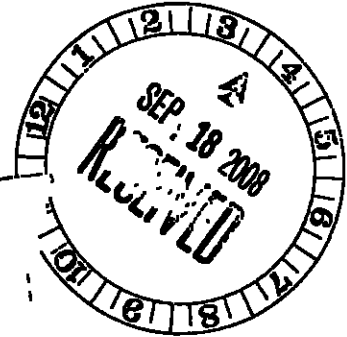


LAW OFFICES
JOHN D. HEFFNER, PLLC
1750 K STREET, N W
SUITE 200
WASHINGTON, D C. 20006
PH: (202) 296-3333
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**SURFACE
TRANSPORTATION BOARD**

September 18, 2008

Ms. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

VIA HAND DELIVERY

Re: Docket No. AB-286 (Sub. No. 5X)

The New York, Susquehanna and Western Railway Corporation
-- Discontinuance of Service Exemption --
In Broome and Chenango Counties, NY

Dear Ms. Quinlan,

Enclosed please find an original and 10 copies of the enclosed Petition which we are filing in this matter, together with a check representing the filing fee and the certification of service.

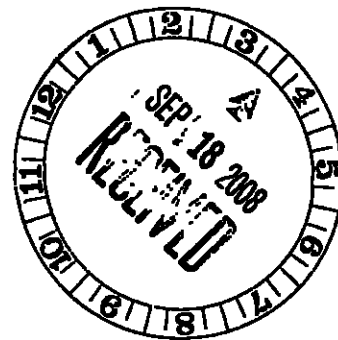
Please stamp and return the extra copy of the Petition.
Thank you for your time and consideration.

Respectfully submitted,

John D. Heffner, PLLC

JDH/mhd
Enc.

FILING FEE WAIVED



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-286 (Sub-No. 5X)

**THE NEW YORK, SUSQUEHANNA AND WESTERN
RAILWAY CORPORATION
--DISCONTINUANCE OF SERVICE EXEMPTION --
IN BROOME AND CHENANGO COUNTIES, NY**

**PETITION OF COUNTY OF CHENANGO INDUSTRIAL
DEVELOPMENT AGENCY
TO REOPEN, REJECT, AND/OR REVOKE EXEMPTION**

**John D. Heffner, PLLC
1750 K Street, N.W.
Suite 200
Washington, DC 20006
(202) 296-3334**

**Attorney for Petitioner
County of Chenango
Industrial Development Agency**

Filed: September 18, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. AB-286 (Sub-No. 5X)

**THE NEW YORK, SUSQUEHANNA AND WESTERN
RAILWAY CORPORATION
- DISCONTINUANCE OF SERVICE EXEMPTION --
IN BROOME AND CHENANGO COUNTIES, NY**

**PETITION OF COUNTY OF CHENANGO INDUSTRIAL
DEVELOPMENT AGENCY
TO REOPEN, REJECT, AND/OR REVOKE EXEMPTION**

INTRODUCTION

On August 29, 2008, the Board served an order in the above-captioned proceeding acknowledging the filing by the New York, Susquehanna and Western Railway Corporation ("NYS&W") of a verified notice of exemption under 49 CFR 1152.50 for its discontinuance of service over a line of railroad known as the Utica Main Line (hereafter the "Line") between MP 202.62 at or near Chenango Forks, Broome County, NY, and MP 243.64 at or near Sherburne, Chenango County, NY, a distance of 41.02 miles. Pursuant to the Board's regulations at 49 CFR 1152.50(d)(3), County of Chenango Industrial Development Agency ("Chenango"), a political subdivision of the State of New York, petitions the Board to reopen, reject,

and/or revoke this exemption. NYS&W's request is contrary to the applicable regulations, contains false and misleading information, and is void *ab initio*.

ARGUMENT

The Board's abandonment and discontinuance regulations prescribe an expedited procedure for the prompt termination of service on lines that have been out of service for two or more years. 49 CFR 1152.50. Briefly, as relevant here, those regulations allow a railroad to discontinue service by merely filing a verified notice of exemption containing certain basic descriptive information at least 50 days before the proposed discontinuance is to be consummated. The regulations also provide that the proposed discontinuance is exempt from the formal procedures of 49 U.S.C. 10903 if certain criteria are met. Among others, the regulations state that a discontinuance will be exempt if the carrier certifies that no local traffic has moved over the line for at least two years, any overhead traffic can be rerouted over other lines, and no formal complaint filed by a user of rail service regarding cessation of service either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The Board's regulations also state that the use of

the exemption is void *ab initio* and will be rejected if the notice contains false and misleading information.

In accordance with those procedures, NYS&W duly filed its notice on August 12, 2008. It certified that no local traffic has moved over the Line for at least two years; that the last local service was over five years ago; that overhead traffic ceased in June 2006 due to significant flood damage on the Line; that all overhead service has been successfully rerouted; and that no formal complaint has been filed by a user of rail service on the Line or is pending with the Board or any U S District Court or has been decided in favor of the complainant within the two year period before the filing. See, NYS&W's verified notice of exemption at 2.

The Board should reject NYS&W's notice for failure to satisfy the requirements of 49 CFR 1152.50(b). Chenango submits with this petition a verified statement prepared by its Executive Director Maureen Carpenter attesting to the fact that Kerry Bio-Science ("Kerry"), a rail customer located on the Line, asked NYS&W on August 6, 2008, for freight rates and transit time quotes for moving raw materials from points in Texas, the Midwest, and Minnesota to Norwich, NY. Kerry's service request was made approximately one week before the NYS&W filed its notice. Carpenter VS at 1-2. The class exemption was established to allow railroads expeditiously

to abandon unused lines. The Board should not condone carriers ignoring requests for service and then invoking the exemption. In light of Kerry's service request, for NYS&W to represent that no local traffic has moved in the past two years is patently false and renders this notice void.

Moreover, the State of New York's Department of Transportation recently filed a Petition to Stay the exemption on the grounds that the NYS&W has breached numerous contractual commitments involving the use of state funds to rehabilitate this line. Title to the property is currently held by the Broome and Chenango County Industrial Development Authorities. Carpenter VS at 1. Chenango believes that NYS&W's unauthorized termination of service during the past five years violates its agreements with the railroad and may be a material basis for termination. Although Chenango recognizes that the Board has no jurisdiction to hear commercial disputes, it cites the railroad's failure to abide by its contractual commitments as an illegal embargo and further evidence of its failure to adhere to its common carrier obligations. By filing its verified notice of exemption, NYS&W is attempting to take advantage of a class exemption that was granted on the basis that the abandonment of out of service lines do not require continued regulation. In Exemption of Out of Service Rail Lines, 366 I.C.C. 885, 892 (1983), the Board's predecessor (the I.C.C.)

stated, “[I]n general, "abandonment of lines out of service for at least 2 years has no competitive or operational impact, because it will usually pertain to short-line segments with no shippers" and "only rarely would there be a public need or interest in continued transportation service over the line". Thus, while [I.C.C.] created a broad exemption reflecting the typical case, the petition to revoke mechanism allows us to reconsider application of the exemption in unusual or unanticipated circumstances.”

The fact that NYS&W has flouted its commitments under contracts with both Chenango and the State clearly underscores the need for regulation over this proposed discontinuance of service.

Finally, the Board should reject NYS&W’s notice under Board and Interstate Commerce Commission precedent holding that the out of service exemption procedure is not appropriate in controversial cases such as this. “This class exemption is intended to provide a simple, expedited procedure for railroads to remove track over lines that have not been operated for years. In almost all instances, these would be noncontroversial, unopposed abandonments.” Id., 366 I.C.C. at 889.

In CSX Transportation, Inc. -- Abandonment Exemption -- In Fayette and Nicholas Counties, WV, STB Docket No. AB-55 (Sub-No. 284X), (Decision served: May 10, 1989) the Board revoked the class exemption

where there was opposition from a shipper who had just entered into a subsidy agreement to continue service over a line and the line segment to be abandoned would sever that person's only link to the rest of the rail system.

Similarly, in Consolidated Rail Corporation -- Exemption -- Abandonment of the Weirton Secondary Track in Harrison and Tuscarawas Counties, OH, STB Docket No. AB-167 (Sub-No. 1088X) (Decision served June 14, 1989), (Weirton Abandonment), the Board revoked the class exemption where, as here, extensive and legitimate concerns were raised by numerous state and local government representatives and shippers about the importance of the line for existing and potential overhead traffic from the area.

In the Weirton Abandonment proceeding, the Interstate Commerce Commission (ICC) was unwilling to apply the class exemption procedures to that abandonment because substantial questions about whether the abandonment comported with the national rail transportation policy had been raised. Whether questions regarding the abandonment of a particular line segment rise to the level that warrant revocation of an exemption depends on the weight of the evidence in each case. The line to be abandoned in Weirton Abandonment was part of a 190-mile east-west mainline called the Panhandle line -- an allegedly "vital piece of important east-west mainline

track." Id. at 7. The ICC noted there (id. at 8) that "extensive and legitimate concerns have been raised by numerous State and local government representatives about the importance of the Panhandle line as a through route for existing and potential overhead traffic for the area." Local and overhead shippers also opposed the abandonment. See, The Burlington Northern and Santa Fe Railway Company--Abandonment Exemption--In Jefferson County, NE, STB Docket No. AB-6 (Sub-No. 399X)(Decision served: May 15, 2003).

The subject proposed service discontinuance should likewise be denied.

CONCLUSION

For the above stated reasons and based upon the above cited authority, Chenango requests that the Board reopen these proceedings and reject or revoke the requested out of service discontinuance exemption as contrary to its regulations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John D. Heffner', with a long horizontal flourish extending to the right.

John D. Heffner

Dated: September 18, 2008

ATTORNEY CERTIFICATION

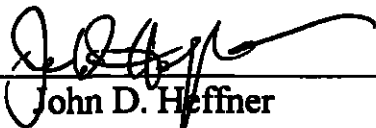
I, John D. Heffner, an attorney-at-law of the District of Columbia, hereby Certify under penalty of perjury that I served a copy of the within pleading upon the following entities by First Class Mail on September 18, 2008:

**Eric M. Hocky
Thorpe Reed & Armstrong
One Commerce Square
2005 Market Street
Suite 1910
Philadelphia, PA 10103**

**Robert B. Rybak
Division of Legal Affairs
NYS Department of Transportation
Albany, NY 12232**

**Richard D'Attilio
Broome County Industrial Development Agency
P.O. Box 1510
Binghamton, NY 13902**

Dated: September 18, 2008



John D. Heffner

VERIFIED STATEMENT OF MAUREEN CARPENTER

Maureen Carpenter, of full age, deposes and states as follows:

My name is Maureen Carpenter. I serve as Executive Director of the County of Chenango Industrial Development Agency. My business address is 19 Eaton Avenue, Norwich, NY 13815. In that capacity I am familiar with all aspects of industrial development including the availability of railroad service. I am submitting this statement in opposition to the New York Susquehanna & Western Railway's ("NYS&W's") attempt to terminate service over the subject line of railroad (the "Utica Branch") between Chenango Forks and Sherburne, NY, in Broome and Chenango Counties, NY.

Broome and Chenango Counties hold title to and lease the subject line of railroad to NYS&W. The line has been out of service for two years due to storm damage. Under the agreements between the parties, NYS&W is obligated to maintain the line and to restore it to service promptly should it be damaged due to weather or other causes. NYS&W has consistently ignored its obligation to restore damaged track and roadbed.

It is my understanding that on or about August 12, 2008, NYS&W filed a notice with the Surface Transportation Board to discontinue service on the subject line due to storm damage notwithstanding the fact that such damage occurred two years before. In making that filing, NYS&W represented that there had been no

local traffic or demand for local traffic. To the best of my knowledge, information and belief, NYS&W's statement is misleading.

On August 6, 2008, an on-line customer known as Kerry Bio-Science contacted NYS&W to request rates on movements of considerable quantities of certain raw materials from various points in Texas, the Midwest, and Minnesota to Norwich, NY, using the out of service portion of the line. Kerry advised NYS&W of its service request by certified mail, return receipt requested. A copy of its correspondence is attached hereto as Exhibit A. To the best of my knowledge and information, NYS&W has not responded to this service request.

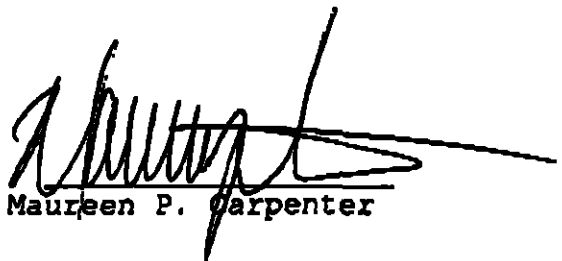
Continued rail service over this line is of great importance to the economic vitality of Chenango County. In addition to the request by Kerry Bio-Science, we have confirmation that a prospective company looking to locate in our area has verbally requested rail service in the Village of Greene, just north of Chenango Forks. Another company is considering situating a large manufacturing facility in very close proximity to Kerry Bio-Science, subject to access to rail service. The existing line and spur meet their needs. If the line is not restored by NYS&W and kept open for future service, the County will lose the ability to attract these industrial businesses. The lack of rail service has already been detrimental to Chenango County in that we have recently lost a company that relocated to an area

with access to rail service. Accordingly, the County respectfully requests the Board deny NYS&W the use of the exemption.

VERIFICATION

Pursuant to 28 U.S.C. 1746, I declare and verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: September 18, 2008.



Maureen P. Carpenter

EXHIBIT A

The logo for Kerry Bio-Science, featuring the word "KERRY" in a bold, sans-serif font. A horizontal line with a small upward-pointing arrow at its right end is positioned below the text.

August 6, 2008

**Kerry Bio-Science
158 State Highway 320
Norwich, NY 13815
Attn:**

Transportation Department:

**We would like to request rail freight rates and transit time quotes from the following locations: Texas to Norwich NY – estimated annual pounds 182,551
Midwest to Norwich NY – estimated annual pounds 1,466,351
Minnesota to Norwich NY – estimated annual pounds 2,080,00**

It is our desire at Kerry to take advantage of the opportunities rail may have to offer, as we economically look toward 2009

We look forward to your response and the opportunity to work with NYSW.

Thank you for your time.

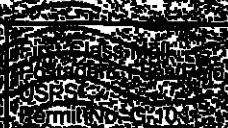
Sincerely,

607-334-1736

Fax 607-334-1793

UNITED STATES POSTAL SERVICE

1999 AUG 21 10:05 AM



• Sender: Please print your name, address, and ZIP+4 in this box •

Kerry B. O'Scannell

1581st Hwy 320

Northwich NY 13857

Att: Tim Voynis



SENDER: COMPLETE THIS SECTION

- 1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 2. Print your name and address on the reverse.
- 3. We will return the card to you.
- 4. Attach this card to the back of the mail piece, or place it in the space permits.

Addressed to:
 15-16
 12 Paulson Ave
 Coxsack, NY
 12026

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
 If YES, give delivery address below

3. Service type:
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Signature Required
☐ Restricted Delivery (extra fee) ☐ Yes ☐ No

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