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March 18, 2019

247300

VIA FEDEX

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

ENTERED
Office of Proceedings
March 19, 2019
Part of
Public Record



Re: Providence and Worcester Railroad Company -
Petition for Discontinuance of Service Exemption -
In Middlesex County, CT
STB Docket No. AB-254 (Sub-No. 11X)

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of the Petition for Discontinuance of Service Exemption being filed on behalf of Providence and Worcester Railroad Company. Also enclosed is a check in the amount of \$7,400 representing the filing fee therefor.

Please time-stamp the additional copy of the Petition enclosed with this letter and return it to me in the self-addressed stamped envelope provided for your convenience.

FILED
March 19, 2019
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
March 19, 2019
SURFACE
TRANSPORTATION BOARD

Cynthia T. Brown
March 18, 2019
Page 2

Please let us know if there are any questions regarding this filing.

Respectfully,

CLARK HILL PLC



Eric M. Hocky

EMH/e

cc: All persons shown on the certificate of service

BEFORE THE
SURFACE TRANSPORTATION BOARD
STB DOCKET NO. AB-254 (Sub-No. 11X)



PROVIDENCE AND WORCESTER RAILROAD COMPANY
-- PETITION FOR DISCONTINUANCE OF SERVICE EXEMPTION --
IN MIDDLESEX COUNTY, CT

PETITION FOR EXEMPTION

(color images included)

ERIC M. HOCKY
CLARK HILL PLC
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Dated: March 18, 2019

Attorneys for
Providence and Worcester Railroad
Company

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-254 (Sub-No. 11X)

**PROVIDENCE AND WORCESTER RAILROAD COMPANY
-- PETITION FOR DISCONTINUANCE OF SERVICE EXEMPTION --
IN MIDDLESEX COUNTY, CT**



PETITION FOR EXEMPTION

Providence and Worcester Railroad Company ("P&W") hereby petitions for an exemption under 49 U.S.C. §10502 from the provisions of 49 U.S.C. §10903 to enable P&W to discontinue service over the line segment between M.P 0.22 +/- and the end of the line segment at M.P. 0.96 in Portland, Middlesex County, Connecticut, a total distance of approximately 0.74 miles (collectively, the "Line Segment"). A map of the Line Segment is attached hereto as Exhibit A. In support of its request for exemption, P&W represents as follows:

Background of Proposed Discontinuance

The Line Segment is less than one mile long and is located in a single county in Connecticut. It traverses through United States Postal Zip Code 06480. Based on information in the possession of P&W, the Line Segment does not contain federally granted rights-of-way. Any documentation related to title in P&W's possession will be made available to those requesting it.

The Line Segment is the stub end of a line of railroad known as the Portland Industrial Track that is owned by the Connecticut Department of Transportation ("CDOT"), and is subject to a lease originally entered into between CDOT and P&W's predecessor. *See Connecticut Central Railroad Company – Exemption operation – Certain Lines of the State of Connecticut,*

ICC Finance Docket No. 31045 (decided May 29, 1987).¹ The Line Segment is constructed of NH 107 lb. rail, and is currently in FRA “Excepted Track” condition.

Since 2009, there has been only one active customer, RED Technologies, LLC (“REDTECH”), on the Line Segment. In calendar year 2018 (the “Base Year”), REDTECH shipped / received 402 carloads of freight. REDTECH anticipates that its traffic will increase, but only if it can obtain additional track to switch its operations. Together with P&W, REDTECH proposes to build a sidetrack on its property along side of the Line Segment. In addition, it would like to use the Line Segment as part of its plant switching operations. Since there are no other customers along the Line Segment, P&W is willing to sublease the Line Segment to REDTECH, but only if it is permitted to discontinue its common carrier service over the Line Segment. CDOT is agreeable to the proposed discontinuance of service, and the sublease to REDTECH. P&W would continue to provide common carrier service over the remainder of the Line, including the common carrier service to REDTECH. By discontinuing service, and not abandoning the Line Segment, P&W would retain the right to reactivate the Line Segment if in the future common carrier service to additional customers were to be reasonably requested.

P&W now seeks an exemption to discontinue service over the Line Segment in order to facilitate the expansion of the business of its shipper REDTECH. The discontinuance is not based on the economic burden of operating the Line Segment, but rather on the fact that the sole

¹ P&W acquired control of Connecticut Central Railroad Company (“CCCL”) in April 1998. *Providence and Worcester Railroad Company – Acquisition and Operation Exemption – Connecticut Central Railroad Company*, STB Finance Docket No. 33527 (served February 23, 1998). CCCL was subsequently merged with and into P&W in May 1998. *Providence and Worcester Railroad Company – Corporate Family Transaction Exemption – Connecticut Central Railroad Company*, STB Finance Docket No. 33592 (served May 15, 1998).

shipper on the Line Segment does not require common carrier service on the Line Segment, and instead would like to use the tracks as private tracks in switching its facility.

Discontinuance of Service Over the Line Segment Should Be Exempted

The discontinuance of service by P&W over the Line Segment would require authorization pursuant to 49 U.S.C. §10903 unless the exemption requested herein is granted. The Board is directed by 49 U.S.C. §10502 to grant an exemption if it finds that (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101, and (2) either the transaction is limited in scope or regulation is not needed to protect shippers from the abuse of market power.

Under 49 U.S.C. §10502 and 49 C.F.R. §1152.60, there is no requirement for a carrier to submit all of the detailed financial data that would be required if discontinuance authority were being sought under 49 U.S.C. §10903 and the regulations relating thereto. Indeed, there is no specific requirement that any financial data be submitted.² Although the proposed discontinuance here is not eligible for the two year out of service class exemption because P&W has been providing service to REDTECH, REDTECH no longer wishes to receive common carrier service over the Line Segment and instead wants to use the tracks as private tracks. P&W would continue to provide the common carrier service to REDTECH by delivering railcars to, and picking up railcars from, the Line Segment.

² Requirements to the contrary would run counter to the principal goals of an exemption proceeding. As the Interstate Commerce Commission found with respect to the two year out-of-service class exemption under 49 C.F.R. §1152.50: "The exemption process now relieves carriers from the need to prepare the costing and valuation studies that are required for Section 10903 abandonment applications. This saves the carriers considerable time and money and allows for expeditious regulatory relief." *Exemption of Rail Line Abandonments or Discontinuance – Offers of Financial Assistance*, 4 ICC 2d 164 (1987).

This discontinuance of less than one mile of rail line located in a single county of Connecticut does not require detailed scrutiny to carry out the rail policies of 49 U.S.C. §10101, and is in keeping with the Board's overall policy of removing unnecessary regulatory barriers from carriers. The Line Segment is stub-ended and there is no overhead traffic that can use the Line Segment. Moreover, there has been only one shipper on the Line Segment during the Base Year (and for the previous nine years before that). It is especially true in this situation that detailed scrutiny is not required given that the sole shipper on the Line Segment supports, and indeed has requested, the proposed discontinuance, and given that the government owner of the Line Segment agrees to the discontinuance as well. *See* the letters attached as Exhibits B and C hereto. Approval of the requested exemption under 49 U.S.C. §10502 would enable P&W to discontinue service over the Line Segment without the extensive costs and delays that would otherwise occur if an application were required to be filed under Section 10903. Further, granting the exemption is in keeping with the following rail policies described in 49 U.S.C. §10101:

* * *

(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues...

* * *

(5) to foster sound economic conditions in transportation...

* * *

(7) to reduce regulatory barriers to entry into and exit from the industry...

* * *

(9) to encourage honest and efficient management of railroads;

* * *

(15) to provide for the expeditious handling and resolution of all proceedings.

Moreover, the grant of the exemption will not be inconsistent with any of the 15 items which have been made a part of rail transportation policy by 49 U.S.C. §10101.

The scope of the exemption requested is limited and will have no direct impact on shippers. As noted, there is only one remaining active on-line shipper, and that shipper supports the proposed discontinuance so that it can sublease and use the tracks as private tracks. Indeed, the common carrier service to the shipper by P&W will continue, and would not be adversely affected by the proposed transaction.

Since the proposed transaction is of limited scope, it is not necessary for the Board to consider whether shippers need to be protected from abuse of market power. However, even if the Board were to consider market power, it is clear that shippers do not need to be protected from its abuse. As noted above, there is only one active shipper, and that shipper will continue to receive the same common carrier service as it receives now and supports the transaction. Regulation is not needed to protect the shipper from abuse of market power.

No formal complaint by a user of rail service on the Line Segment, or a state or local government entity acting on behalf of such a user, regarding cessation of service over the Line Segment either is pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the last two years.

Additional Information

Although not required under the Board's regulations for discontinuance petitions for exemption, P&W hereby provides the following additional information that would be required

under 49 C.F.R. 1152.50(d)(2) and 1152.22 if the discontinuance were sought pursuant to the Board's class exemption:

(a)(1) The exact name of Applicant is: Providence and Worcester Railroad Company.

(a)(2) P&W is a common carrier by rail subject to 49 U.S.C. Subtitle IV, chapter 105. P&W currently holds the common carrier operating freight authority for the Line Segment based on its acquisition of CCRL which originally received authority to lease the Portland Industrial Track from CDOT. *See* footnote 1 above. P&W is the current lessee of the Line (including the Line Segment) under a lease with CDOT. CDOT owns the assets comprising the Line and the Line Segment.

(a)(3) P&W seeks to discontinue service over the Line Segment. There are no stations on the Line Segment.

(a)(4) A map of the Line Segment is attached as Exhibit A.

(a)(7) The representative of P&W to whom correspondence should be sent is: Eric M. Hocky, Clark Hill PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

(a)(8) The Line Segment traverses through United States ZIP Code 06480.

(e)(4) The Line Segment will not be suitable for use for other public purposes since only discontinuance authority is sought. In any event, the Line Segment is already owned by CDOT, an agency of the State of Connecticut, and CDOT has agreed that a sublease of the tracks to REDTECH following discontinuance is in the public interest.

P&W proposes to consummate the discontinuance at the earliest possible date permitted by the Board.

Employee Protection

Although no employees of P&W are expected to be affected by the discontinuance, P&W recognizes that the discontinuance will be made subject to the employee protective conditions in *Oregon Short Line Railroad Co.--Abandonment--Goshen*, 360 ICC 91 (1979).

Public and Trail Use Conditions

Because P&W seeks only discontinuance and not abandonment authority, interim trail use/rail banking and public use conditions are not appropriate. *See Blacklands Railroad, Inc. – Discontinuance Exemption – In Rusk County, Tex.*, STB Docket No. AB 1108X (Served April 3, 2013); *CSX Transportation, Inc. – Discontinuance of Service Exemption - In Raleigh County, W. Va.*, STB Docket No. AB 55 (Sub-No. 725X) (served September 11, 2012); *Norfolk Southern Railway Company – Discontinuance of Service Exemption – In St. Joseph and LaPorte Counties, IN*, STB Docket No. AB-290 (Sub-No. 307X) (served June 18, 2008).

Environmental and Historic Reports

Because P&W seeks only discontinuance and not abandonment authority, P&W will not be disposing of or altering the Line Segment or any structures that are 50 years old or older. An environmental and historic report is not required for a discontinuance proceeding. *See* 49 C.F.R. §1105.6(c) and §1105.8(b). *See also Blacklands Railroad, Inc. – Discontinuance Exemption – In Rusk County, Tex.*, STB Docket No. AB 1108X (Served April 3, 2013); *CSX Transportation, Inc. – Discontinuance of Service Exemption - In Raleigh County, W. Va.*, STB Docket No. AB 55 (Sub-No. 725X) (served September 11, 2012); *Norfolk Southern Railway Company – Discontinuance of Service Exemption – In St. Joseph and LaPorte Counties, IN*, STB Docket No. AB-290 (Sub-No. 307X) (served June 18, 2008).

Notice

Pursuant to the provisions of 49 C.F.R. §1152.60(c), P&W has attached, as Exhibit D, a draft Federal Register notice of its Petition to be published by the Board within 20 days of the Petition's filing with the Board. The form of notice has been modified to reflect that this proceeding involves discontinuance and not abandonment authority.

A notice as required by 49 C.F.R. §1105.12 was published on March 11, 2019, in *The Middletown Press*. A copy of the notice is attached as Exhibit E. A copy of the proof of publication will be submitted as soon as it is provided.

A copy of this Petition is being sent to the persons designated in 49 C.F.R. §1152.50(d), as well as to the only shipper who used the Line Segment in the Base Year.

Conclusion

For the foregoing reasons, P&W requests that the Board, under 49 U.S.C. §10502, exempt its discontinuance of service over the Line Segment from regulation under 49 U.S.C. §10903.

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL PLC
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

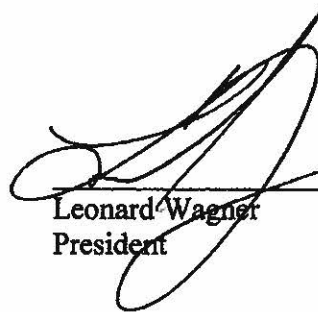
Dated: March 18, 2019

Attorneys for
Providence and Worcester Railroad
Company

Verification

I hereby verify on behalf of Providence and Worcester Railroad Company, under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

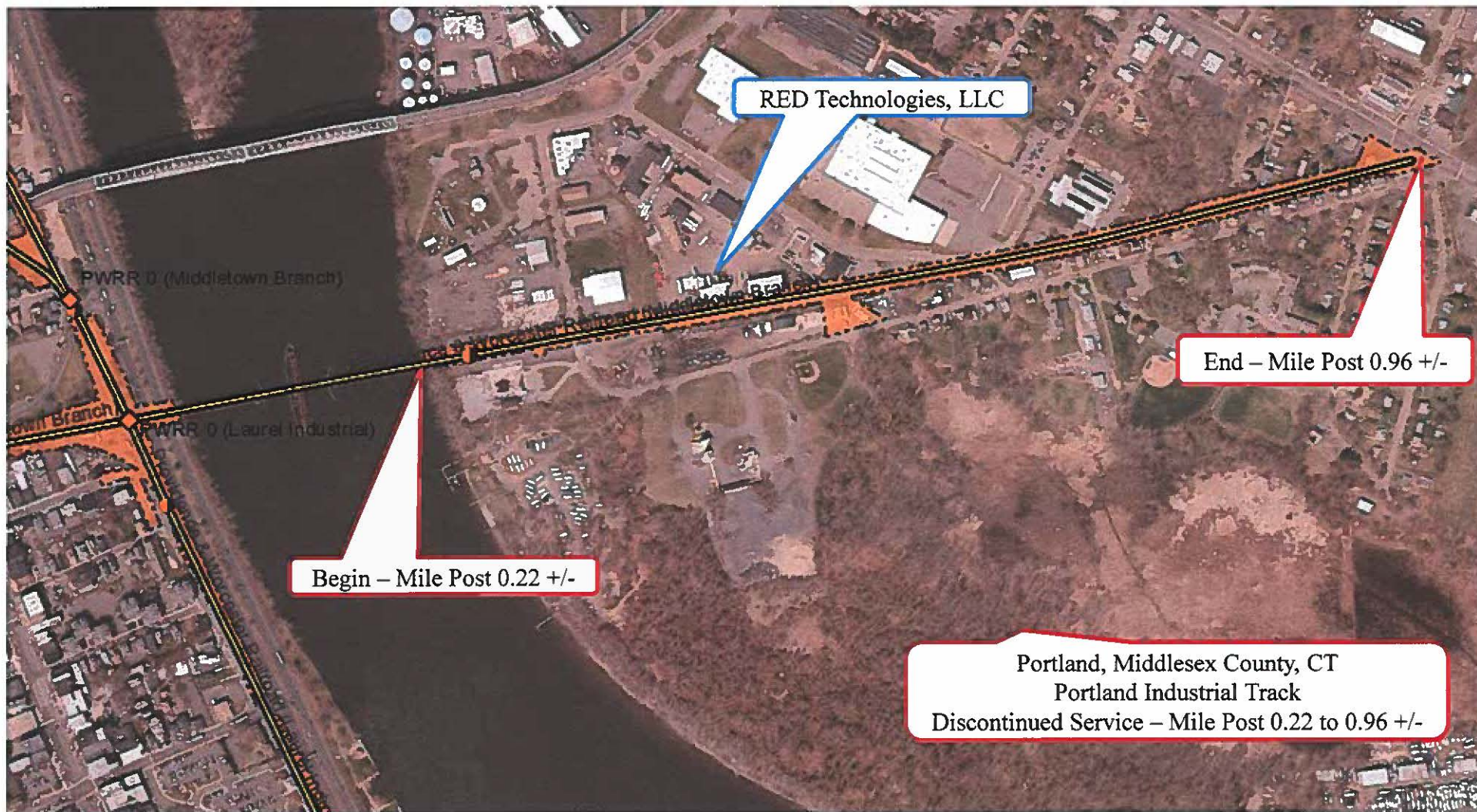
Executed on March 18, 2019.



Leonard Wagner
President

EXHIBIT A

MAP



RED Technologies, LLC

End - Mile Post 0.96 +/-

Begin - Mile Post 0.22 +/-

Portland, Middlesex County, CT
Portland Industrial Track
Discontinued Service - Mile Post 0.22 to 0.96 +/-

EXHIBIT B

LETTER FROM

RED TECHNOLOGIES, LLC



RED TECHNOLOGIES, LLC
REMEDATION, ENGINEERING & DEVELOPMENT

10 Northwood Drive, Bloomfield, CT 06002
Tel: 860.218.2428 | Fax: 860.218.2433
Web: www.redtechllc.com

February 15, 2019

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

RE: Notice of Petition for Exemption to Discontinue Service [Docket No. AB-254 (Sub-No. 11X)]
PROVIDENCE AND WORCESTER RAILROAD COMPANY - IN MIDDLESEX COUNTY, CT

Dear Board Members:

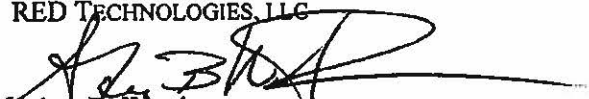
Our company, RED Technologies, LLC (REDTECH), is writing in support of the above referenced Notice of Petition being filed by the Providence and Worcester Railroad Company (P&W).

REDTECH is currently the only active freight rail customer located on this section of track. Efficient rail freight transportation is essential to our core business. The identified Line Segment is the stub end of a line of railroad known as the Portland Industrial Track. It is owned by the Connecticut Department of Transportation (CTDOT) and leased to the operating rail carrier. We have been working with the P&W to support our existing shipping needs and to address future growth opportunities. In order to accomplish these mutual transportation goals, our company proposes to build a sidetrack on our property along side of the Line Segment. In addition, we would like to use the Line Segment as part of our plant switching operations. This will give us operational flexibility to load more railcars and make them available to the P&W for line-haul movement to destination. This will increase railcar utilization, improve transit times and allow higher shipping volumes.

As there are no other active customers along the Line Segment, P&W is willing to sublease the Line Segment to REDTECH, but only if it is permitted to discontinue its common carrier service over the Line Segment. CTDOT is agreeable to the proposed discontinuance of service, and the sublease to REDTECH. P&W would continue to provide common carrier service over the remainder of the Line, including the common carrier service to REDTECH.

We respectfully ask that you grant P&W's petition, as submitted. If you have any questions, please contact us at your earliest convenience.

Sincerely yours,
RED TECHNOLOGIES, LLC



Adam B. Westhaver

cc: Project Files

EXHIBIT C

LETTER FROM

CONNECTICUT DEPARTMENT OF TRANSPORTATION



**STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION**

Bureau of Public Transportation
2800 Berlin Turnpike
Newington, Connecticut 06131-7546
860-594-2802



*Richard W. Andreski
Bureau Chief*

February 15, 2019

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

RE: Notice of Petition for Exemption to Discontinue Service [Docket No. AB-254 (Sub-No. 11X)]
PROVIDENCE AND WORCESTER RAILROAD COMPANY - IN MIDDLESEX COUNTY, CT

Dear Board Members:

The Connecticut Department of Transportation (CDOT) is writing in support of the above referenced Notice of Petition being filed by the Providence And Worcester Railroad Company (P&W).

CDOT owns this Line Segment and licenses the track to the P&W, who in turns provides the common carrier rail freight service over the line.

Currently, RED Technologies, LLC (Red-Tech) is the only active freight rail customer located on the Line Segment. The identified Line Segment is the stub end of a line of railroad known as the Portland Industrial Track. Red Tech has been working with the P&W to better address their current rail shipping needs as well as accommodate increased volumes and future growth opportunities. P&W has worked with Red-Tech to provide a solution to their transportation needs that involves some changes in the current track use arrangements. Red-Tech has proposed to build a sidetrack on their own property adjacent to the Line Segment. In addition, Red-Tech also seeks to use a portion of the Line Segment as part of their plant switching operations. Together, these changes will provide operational flexibility to increase railcar shipments, cut car cycle times and efficiently manage their transportation facility.

Currently, there are no other active customers along the Line Segment. If permitted to discontinue its common carrier service over the Line Segment, P&W is willing to grant a nonexclusive license to use a portion of the Line Segment to Red-Tech. CDOT is supportive and agreeable to the proposed discontinuance of service, and to granting the license to Red-Tech. It is our understanding that P&W would also continue to provide common carrier service over the remainder of the Line, including common carrier service to Red-Tech.

February 19, 2019

CDOT respectfully asks that P&W's petition be approved. Should you have any questions or desire additional information, please contact me at your earliest convenience.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'R. Andreski', written in a cursive style.

Richard W. Andreski
Bureau Chief
Public Transportation

EXHIBIT D

DRAFT FEDERAL REGISTER NOTICE

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB-254 (Sub-No. 11X)]

PROVIDENCE AND WORCESTER RAILROAD COMPANY
- PETITION FOR DISCONTINUANCE OF SERVICE EXEMPTION -
IN MIDDLESEX COUNTY, CT

Notice of Petition for Exemption to Discontinue Service

On March 19, 2019, Providence and Worcester Railroad Company (P&W) filed with the Surface Transportation Board, Washington, D.C. 20423, a petition for exemption for the discontinuance of service over a line of railroad between M.P. 0.22 +/- and the end of the line segment at M.P. 0.96 +/-, in Portland, Middlesex County, Connecticut, a total distance of 0.74 miles (the Line Segment). The Line Segment traverses through United States Postal Service ZIP Code 06480, and does not include any stations. According to the petition, the Line Segment is stub-ended and therefore not capable of handling overhead traffic.

P&W states that the Line Segment does not contain federally granted rights-of-way. Any documentation in P&W's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by Oregon Short Line Railroad Co. - Abandonment - Goshen, 360 I.C.C. 91 (1979).

By the issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. §10502(b). A final decision will be issued no later than _____ (90 days after filing).

Any offer of financial assistance (OFA) under 49 C.F.R. §1152.27(b)(2) to subsidize continued rail service will be due not later than 10 days after service of a decision granting the

petition for exemption. Each OFA to subsidize continued rail service must be accompanied by the required filing fee, which is currently set at \$1800. See 49 C.F.R. §1002.2(f)(25).

Because the petition requests an exemption for discontinuance and not abandonment, interim trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 C.F.R. §§1105.6(c)(2) and 1105.8(b).

All filings in response to this notice must refer to Docket No. AB 254 (Sub-No. 11X), and must be sent to: (1) Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001; and (2) P&W's representative Eric M. Hocky, Clark Hill PLC, 2005 Market Street, Suite 1000, Philadelphia, PA 19103. Replies to the petition are due on or before _____.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238, or refer to the full discontinuance regulations at 49 C.F.R. Part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Board decisions and notices are available on our website at WWW.STB.GOV.

Decided: _____

By the Board, _____, Director, Office of Proceedings

EXHIBIT E

NEWSPAPER NOTICE

NOTICE OF INTENT TO DISCONTINUE RAIL SERVICE

Providence and Worcester Railroad Company (P&W) gives notice that on or about March 19, 2019, it intends to file with the Surface Transportation Board (STB), Washington, DC 20423, a petition for exemption under 49 USC 10502 from the prior approval requirements of 49 USC 10903, et seq., permitting the discontinuance of service over the 0.74 mile line of railroad between M.P. 0.22 +/- and the end of the line at M.P. 0.96 +/-, in Portland, Middlesex County, Connecticut (the Line). The Line traverses through United States ZIP Code 06480. The P&W proceeding will be docketed as STB Docket No. AB-254 (Sub-No. 11X).

Because the proposed action entails the discontinuance of service over the Line, rather than abandonment, no environmental or historic documentation is required under 49 CFR 1105.6 and 1105.8.

Appropriate offers of financial assistance to subsidize rail service can be filed with the STB.

Trail use / rail banking and public use condition requests are not appropriate in discontinuance proceedings.

An original and 10 copies of any pleading that raises matters other than environmental issues (such as offers of financial assistance) must be filed directly with the STB's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423-0001 [see 49 CFR 1104.1(a) and 1104.3(a)], and one copy must be served on applicant's representative [see 49 CFR 1104.12(a)]. Questions regarding offers of financial assistance may be directed to the STB's Office of Public Assistance, Governmental Affairs and Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on P&W's representative: Eric M. Hocky, Esquire, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; 215-640-8500.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the persons shown on the attached list, by first class mail, postage prepaid.



Eric M. Hocky

Dated: March 18, 2019

A. Persons to Receive Notices under 49 CFR 1152.60(d) and 1152.50(d):

Connecticut Department of Transportation
Bureau of Public Transportation
2800 Berlin Turnpike
Newington, CT 06131-7546

United States Department of the Army
Military Surface Deployment and Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
709 Ward Drive, Building 1990 [1Soldier Way]
Scott AFB, IL 62225-5357

U.S. Department of the Interior -
National Park Service
RTCA Program (Org code 2220)
1849 C Street, NW
Washington, DC 20240-0001

U.S. Department of the Interior -
National Park Service
RTCA Program – Northeast Region
15 State Street
Boston, MA 02109

Office of Chief of Forest Service
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250-1111

B. Most Recent Shipper(s):

RED Technologies, LLC
173 Pickering Street
Portland, CT 06480