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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: Docket No. AB 1314X, The Elk River Railroad, Inc. –
Abandonment Exemption – In Kanawha & Clay Counties, WV

Dear Ms. Brown:

Enclosed for e-filing in the above referenced docket, please find a supplement to the July 2, 2021 Verified Notice of Exemption for Abandonment pursuant to 49 C.F.R. § 1152.50, submitted on behalf of The Elk River Railroad, Inc. (“TERRI”). TERRI submits the enclosed Supplemental Information pursuant to the Order served by the Board in this proceeding on August 3, 2021.

Please contact the undersigned if you have any questions regarding this Supplemental Information. Thank you for your attention to this matter.

Respectfully submitted,

A. Rebecca Williams
An Attorney for The Elk River Railroad, Inc.

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

THE ELK RIVER RAILROAD, INC. –	)	
Abandonment Exemption – In Kanawha &	)	
Clay Counties, WV	)	Docket No. AB 1314X
	)	

**THE ELK RIVER RAILROAD, INC.
SUPPLEMENTAL INFORMATION REGARDING
JULY 2, 2021 VERIFIED NOTICE OF EXEMPTION**

THE ELK RIVER RAILROAD, INC.

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Its Attorneys

Dated: August 17, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

THE ELK RIVER RAILROAD, INC. –	)	
Abandonment Exemption – In Kanawha &	)	Docket No. AB 1314X
Clay Counties, WV	)	
	)	

SUPPLEMENT TO VERIFIED NOTICE OF EXEMPTION

Pursuant to the order served by the Surface Transportation Board (“STB” or “Board”) on August 3, 2021 (“Order”), the Elk River Railroad, Inc. (“TERRI”), a Class III railroad, hereby submits this supplemental information to its July 2, 2021 Verified Notice of Exemption for Abandonment pursuant to 49 C.F.R. § 1152.50 (“NOE”). The Board’s Order holds the exemption proceeding in abeyance to allow TERRI to provide information concerning (1) whether TERRI’s NOE would result in a stranded segment of track; and (2) if so, how that would affect TERRI’s entitlement to the abandonment exemption it seeks in this proceeding.¹

As demonstrated herein, granting TERRI’s requested abandonment exemption will not result in removing its line from the national rail network, as TERRI and WVSRA intend to railbank the line for interim trail use. Thus, TERRI’s proposed abandonment, as described in its NOE, will not sever an adjoining segment of track from the interstate rail system, as TERRI’s

¹ The Board’s Order also permits TERRI to respond to a July 28, 2021 comment submitted by the National Association of Reversionary Property Owners (“NARPO”) requesting that the Board not allow TERRI to railbank its Line, alleging it is not connected to the national rail system. NARPO’s comment appears to be based on a misunderstanding of the Board’s decision granting after-the-fact authority for the 1995 merger of the Buffalo Creek Railroad Co. into TERRI, which stated: “[t]he *BC&G* rail line does not connect with another rail line other than TERRI’s at Dundon, W. Va.” *Elk River R.R.—Merger Exemption—Buffalo Creek R.R.*, FD 36434, slip op. at 3 (STB served Nov. 5, 2020) (emphasis added). The BC&G (Buffalo Creek & Gauley Railroad) is a separate rail line owned and operated by the West Virginia State Rail Authority (WVSRA) and is not subject to TERRI’s NOE. As explained herein, TERRI’s Line clearly connects to the national rail system at Gilmer, WV. *See infra* p. 3.

line will be preserved for future restoration of rail service. Even if the Board finds TERRI's proposed abandonment would result in a stranded segment – which it should not – TERRI is still entitled to the abandonment exemption it seeks, as none of the Board's concerns regarding "severed segments" are at issue here, and continued regulation is not necessary.

BACKGROUND

As explained in its NOE, TERRI is seeking an abandonment exemption for approximately 53.4 miles of its rail line located between Milepost ("MP") 96.0 (at or near Clendenin, WV) and MP 43.6 (at or near North Line, south of Duck, WV), including the 0.8 miles extending south from MP 67.2 (at or near Hartland, WV) known as the Middle Creek Spur, in Kanawha and Clay Counties, West Virginia (the "Line"). No local rail traffic has moved over the Line in more than 20 years, and there is no overhead traffic. Subject to Board authorization, TERRI and the West Virginia State Rail Authority ("WVSRA") – a Class III rail carrier and governmental instrumentality of the State of West Virginia – have negotiated, and intend to execute, an agreement for the purchase and interim trail use/railbanking of the Line as a pedestrian and bicycle trail, pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) ("Trails Act") and the Board's interim trail use regulations, 49 C.F.R. § 1152.29.² The West Virginia Department of Natural Resources ("WVDNR") would operate the trail as a State Park.

TERRI's Line intersects with an approximately 18-mile rail line, owned and operated by WVSRA, known as the Buffalo Creek and Gauley Railroad ("BC&G").³ The

² TERRI understands that WVSRA will be submitting a comment in support of TERRI's NOE that will provide additional context to the negotiated agreement between TERRI and WVSRA, and will confirm WVSRA's intention to petition the Board for a notice of interim trail use at its earliest opportunity.

³ See *W. Va. State Rail Auth.—Acquis. & Operation Exemption—Elk River R.R.*, FD 36458 (STB served Dec. 2, 2020) (authorizing WVSRA to purchase and operate the BC&G,

BC&G is a common carrier rail line extending from a junction point on TERRI's Line at Dundon (MP 62.2 on TERRI's Line; MP 0.0 on the BC&G) to Widen (MP 18.0) in Clay County, WV.

The BC&G connects to the interstate rail system via TERRI's right-of-way, which interchanges with the Appalachian & Ohio Railroad, Inc. ("AO") at Gilmer, WV (MP 6.7).⁴ AO operates by lease over certain lines in West Virginia and interchanges with CSX Transportation, Inc. ("CSXT") at the CSXT Grafton Yard.⁵

Like TERRI's Line, no shippers are currently located on the BC&G, and no freight traffic has moved over the BC&G in over twenty (20) years.⁶ WVSRA acquired the BC&G from TERRI under the Board's exemption procedures governing acquisitions of rail lines by a Class III rail carrier for continued rail operations. WVSRA intends to operate an excursion passenger train over the BC&G, while maintaining its common carrier obligation to provide service to freight shippers upon reasonable request. WVSRA's planned use of the BC&G is entirely consistent with – and its common carrier obligation is in no way hindered by – TERRI and WVSRA's plan to railbank TERRI's Line for interim trail use. The Trails Act and the Board's interim trail use regulations explicitly require that a railbanked line be subject to possible reactivation of rail service, and in the event a shipper locates on TERRI's Line or the

including the real property, right-of-way and/or easement rights underlying the rail line, from TERRI under 49 C.F.R. § 1150.41).

⁴ While TERRI's NOE covers a portion of the upper segment of TERRI's right-of-way, from Hartland (MP 67.2) to North Line (MP 43.6), TERRI's right-of-way extends further north past MP 43.6 to Gilmer (MP 6.2). See *Elk River R.R.—Lease, Operation & Acquis. Exemption—Line of CSX Transp., Inc.*, FD 31497 (ICC served July 26, 1989).

⁵ See *Appalachian & Ohio R.R.—Lease & Operation Exemption—CSX Transp., Inc.*, FD 34653 (STB served Mar. 11, 2005).

⁶ See WVSRA Verified Notice of Exemption at 2, *W. Va. State Rail Auth.—Acquis. & Operation Exemption—Elk River R.R.*, FD 36458 (notice filed Nov. 14, 2020); *Elk River R.R.—Merger Exemption—Buffalo & Creek R.R.*, FD 36434, slip op. at 3 (STB served Nov. 5, 2020).

BC&G and submits a reasonable request for service, TERRI and/or WVSRA will petition the Board to vacate interim trail use and reinstitute rail service over the Line, as required.

I. The BC&G will not be severed from the interstate rail network as a result of TERRI's abandonment exemption, as TERRI and WVSRA intend to railbank the Line for interim trail use.

Where there is a common carrier obligation attached to a particular segment of track, the Board generally “will not allow that segment to become isolated from the rail system as a result of the abandonment of the adjoining segment.” *Sierra N. Ry.—Aban. Exemption—In Yolo Cnty., Cal.*, AB 874 (Sub-No. 1X), slip op. at 3 (STB served June 22, 2020) (*Sierra*). However, a line of railroad can only be severed from the interstate rail network if “another carrier abandon[s] the only connecting line,” which can only occur if there are no regulatory or legal barriers prohibiting consummation (such as an interim trail use/railbanking condition),⁷ and the carrier files a notice of consummation with the Board.⁸ As explained in TERRI's NOE, TERRI and WVSRA intend to railbank the Line for interim trail use under the Trails Act, which expressly *prohibits* abandonment.⁹ Thus, TERRI's proposed transaction will not remove the Line from the national rail system, and therefore, will not isolate the BC&G.¹⁰

⁷ See *Landowners—Mot. for Declaratory Order & Injunctive Relief*, AB 1065 (Sub-No. 1X), slip op. at 4 (STB served Jan. 27, 2020); *id.* at 5 (“authority to abandon the Lines was subject to a NITU, which is a barrier to consummation”).

⁸ See *Honey Creek R.R.—Pet. for Declaratory Order*, FD 34869, *et al.*, slip op. at 6-7 (STB served June 4, 2008) (rejecting landowner's argument that the Board should find a line abandoned because it was severed from the interstate rail network, stating “no severance has occurred here, because the railroad has until 2009 to file a notice of consummation and a carrier does not sever a line by paving over a part of it or removing rail from it”) (citations omitted).

⁹ See *Iowa Power, Inc.—Constr. Exemption—Council Bluffs, IA*, 8 I.C.C.2d 858, 866 n.12 (Dec. 11, 1990) (*Iowa Power*) (“If there is interim trail use, there is no abandonment of the right-of-way for railroad purposes. Rather, the ICC will hold in abeyance its authorization to abandon the right-of-way, and the route will remain intact and available for future active rail service.”).

¹⁰ TERRI acknowledges that an unconditioned grant of abandonment authority could result in a “stranded segment,” but only in the event TERRI consummated abandonment – an

The Board has been abundantly clear:

The Trails Act “is the culmination of congressional efforts to preserve shrinking rail trackage by converting unused rights-of-way to recreational trails.” *Preseault v. ICC*, 494 U.S. 1, 5 (1990) (*Preseault*). Under the Trails Act, the Board **must** “preserve established railroad rights-of-way for future reactivation of rail service” by **prohibiting abandonment** where a trail sponsor agrees to assume full managerial, tax, and legal liability for the right-of-way for use in the interim as a trail. *See* 16 U.S.C. 1247(d).

Norfolk & W. Ry.—Aban. Exemption—Between Kokomo & Rochester in Howard, Miami & Fulton Cntys., IN, AB-290 (Sub-No. 168X), slip op. at 4 (STB served May 4, 2005) (*Norfolk*) (emphasis and bold added) (finding a segment of railbanked line was not severed from the interstate rail network and “remain[ed] available for eventual rail service,” as it was connected to a line in the interstate rail network – despite the fact that the connecting line was only being used to store rail cars, some ties had been removed, and there was a public grade crossing located between the railbanked segment and connecting line – because the owner of the line “remains a common carrier with an obligation to provide rail service upon request,” and the line “remains a link which the [railbanked] segment could connect to the interstate rail network if active service on this rail banked line were to be restored”).¹¹ The Trails Act “expressly provides that ‘if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall

action that directly contradicts TERRI’s stated intention to railbank the Line, and undermines and violates the agreement TERRI negotiated with the WVSRA to transfer the Line to WVSRA for interim trail use as a pedestrian and bicycle trail to be operated by WVDNR as a State Park.

¹¹ *See also Iowa Power*, 8 I.C.C. at 866 (granting the first request for modification of a NITU to reinstate service in a Trails Act case, the ICC held: “When a railroad enters into a Trails Act arrangement, the Commission retains jurisdiction (that it would have otherwise lost) over the right-of-way and the railroad forgoes the ability to dispose of the property in any other way. The legitimacy of rail banking can be presumed in every case. Congress did not distinguish between short- and long-term rail banking, and therefore, we do not believe that specific contingency plans for reactivation of a line are necessary to justify retention of a potentially valuable national asset. The fact that the railroad agrees to trail use is indication in and of itself that the corridor may be valuable in the future for transportation.”) (internal quotation omitted).

not be treated, for [any] purposes . . . as an abandonment.” *Id.* (quoting 16 U.S.C. § 1247(d)).

“Instead, the right-of-way is ‘rail banked,’ which means that the railroad is relieved of the current obligation to provide service over the line but that the railroad (or any other approved rail service provider) may reassert control over the right-of-way to restore service on the line in the future.” *Id.*

The Board has explicitly rejected the notion that trail development over a rail line under the Trails Act would permanently sever the line from the national rail system or make it a “practical impossibility” to restore rail service over the line. *See, e.g., Chelsea Prop. Owners—Aban.—Portion of the Consol. Rail Corp.’s W. 30th St. Secondary Track in New York, NY, AB-167 (Sub-No. 1094)A, et al., slip op. at 8-9 (STB served June 13, 2005) (Highline).* In *Highline*, the Board outright rejected this argument and issued a CITU, finding: (1) the railroad and proposed trail sponsor “satisfied the statutory requirements related to rail banking by acknowledging that interim trail use would be subject to the future restoration of rail service at any time;” (2) claims that the project would make restoration of rail service impossible were “premature and speculative;” and (3) the proposed railbanking and redevelopment project would not clearly sever the Highline from the national rail system, as the trail sponsor assured the Board it would “retain the easements necessary to enable the Highline to connect with the national rail system” in the event rail service needed to be restored over the line in the future. *Id.* at 9. In issuing the requested CITU, the Board found it was sufficient that the prospective trail sponsor “provided assurances that its plans would not make the reinstatement of rail service physically impossible,” as “any interim trail use arrangement is subject to being cut off at any time by the reinstitution of rail service.” *Id.*

The Board should apply the same principles here as it did in *Norfolk* and *Highline*. As stated in TERRI's NOE, TERRI and WVSRA have negotiated, and intend to execute, an agreement for TERRI to transfer the Line to WVSRA for railbanking and interim trail use under the Trails Act. TERRI and WVSRA's plans to convert TERRI's Line for interim use as a pedestrian and bicycle trail, as detailed in TERRI's Combined Environmental and Historic Report, will not render the reinstatement of rail service a "physical impossibility." *See* NOE, Ex. F. Moreover, railbanking TERRI's Line would not remove the Line, and therefore would not sever the BC&G, from the interstate rail network, since the Line connects with the remainder of TERRI's right-of-way, over which TERRI "remains a common carrier with an obligation to provide rail service upon reasonable request," and which "remains a link which [TERRI's Line and the BC&G] could connect to the interstate rail network if service on [TERRI's] rail banked line were to be restored."¹² If and when TERRI, WVSRA "or another authorized operator wishes to restore rail service to all or part of a rail banked line, it has the right to do so." *Highline* at 9.¹³ In that event, pursuant to the parties' negotiated agreement, TERRI and WVSRA would work together "to take whatever corrective actions are necessary to permit the reinstitution of freight service." *Id.* (internal quotation omitted).

As represented to the Board in its NOE, TERRI anticipated that within ten (10) days of the STB publishing the Notice in the Federal Register, WVSRA would petition the Board for a notice of interim trail use pursuant to 49 C.F.R. § 1152.29. *See* NOE at 1, 3, 4. Since the Notice has not yet been published, and the proceeding has been held in abeyance, WVSRA has not yet had the opportunity to submit its request to the Board but has represented to TERRI that

¹² *See Norfolk* at 8; *Highline* at 9 (TERRI would "retain the [access rights] necessary to enable the [Line and the BC&G] to connect with the national rail system").

¹³ *See also* 16 U.S.C. § 1247(d); 49 CFR § 1152.29(a).

it will do so at the earliest opportunity. WVSRA's petition would, under the Board's regulations, necessarily include a Statement of Willingness to Assume Financial Responsibility for the Line, including an acknowledgment that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service. Moreover, the railbanking agreement WVSRA and TERRI have negotiated and intend to execute, subject to receiving Board authorization, similarly acknowledges that use of the Line as a trail is subject to reactivation for rail service – by TERRI or WVSRA – should a need arise. In the unlikely event a shipper locates on the BC&G and submits a reasonable request for service, TERRI and WVSRA both acknowledge their respective obligations and have agreed to act in accordance with the Board's regulations to reactivate rail service over the Line to allow WVSRA to fulfill its common carrier obligation. Railbanking the Line will not sever the BC&G from the interstate rail network and will in no way prohibit WVSRA from fulfilling its common carrier obligation.

II. Even if the Board finds TERRI's proposed abandonment could disconnect the BC&G from the interstate rail network – which it should not – TERRI is still entitled to the abandonment exemption it seeks, as the Board's concerns regarding "severed segments" are not at issue here.

While the Board generally does not "allow track to which a common carrier obligation is attached to become isolated from the rail system as a result of the abandonment of an adjoining segment,"¹⁴ its rationale for doing so does not apply to TERRI's proposed abandonment of the Line and subsequent plans to railbank the Line for interim trail use.

The cases in which the Board has determined it could not grant abandonment authority due to potentially isolating an adjoining segment from the interstate rail system are entirely distinguishable from TERRI's situation, as there are no active shippers on the BC&G

¹⁴ *ABE Fairmont, LLC—Aban. Exemption—In Fillmore Cnty., Neb.*, AB 1106X, *et al.*, slip op. at 4 n.3 (STB served Jan. 29, 2018),

that are at risk of becoming “isolated” and losing service as a result of the proposed abandonment;¹⁵ the proposed abandonment will not result in the loss of overhead traffic or revenues for WVSRA;¹⁶ and, most importantly, neither TERRI’s Line, nor the BC&G, will be permanently removed or disconnected from the national rail network.¹⁷ Both TERRI’s Line and the BC&G do not have any active shippers, do not handle overhead traffic, and have not carried freight traffic in over twenty (20) years. WVSRA currently operates an excursion passenger train over the BC&G, which will not be impacted by the grant of an abandonment exemption to TERRI. Moreover, as discussed in Section I, *supra*, the BC&G will not be permanently disconnected from the national rail network, as TERRI is not seeking to consummate abandonment of the Line, but rather, intends to railbank the Line for interim trail use; thus, “[i]f and when the railroad or another authorized operator wishes to restore rail service to all or part of a rail banked line, it has the right to do so.”¹⁸

¹⁵ See, e.g., *Cent. Or. & Pac. R.R.—Aban. & Discontinuance of Serv.—In Coos, Douglas, & Lane Cntys., Or.*, AB-515 (Sub-No. 2), slip op. at 2 (STB served Oct. 31, 2008) (*Central Oregon*) (protests were filed by shippers, and a segment proposed to be abandoned connected the remainder of the line to the national rail system and was “still actively serving at least one shipper”); *Buffalo & Pittsburgh R.R.—Aban. Exemption—In Erie & Cattaraugus Cntys., NY*, AB-369 (Sub-No. 3X) (STB served Sept. 18, 1998) (STB could not make findings necessary to grant abandonment exemption in light of opposition submitted by three active shippers on the line and a protest by a shipper on the adjoining line that would become isolated, who emphasized it had “no viable alternative to rail service for its traffic” out of state and its “overhead traffic would be lost” if abandonment occurred).

¹⁶ *Rochester & S. R.R.—Aban. Exemption—In Cattaraugus Cnty., NY*, AB-354 (Sub-No. 2X) (STB served Sept. 18, 1998) (abandonment would result in the adjoining “isolated” railroad’s loss of all traffic and revenue, as the adjoining line’s only shipper and source of revenue would be forced to find alternative means to transport its freight out of state).

¹⁷ See, e.g., *Highline* at 8-9 (“any interim trail use arrangement is subject to being cut off at any time by the reinstitution of rail service”).

¹⁸ *Id.*

The Board has authorized abandonment, even if doing so would disconnect an adjoining segment, where the Board found “it is not . . . a certainty that the [segment] will be *permanently* disconnected from the interstate rail network.” *See Sierra* at 2 (emphasis added). In *Sierra*, the Board found that although a segment of line would become physically disconnected from the national rail system if the proposed abandonment were granted and consummated, “under the unique circumstances of [the] case, it is reasonable and in the public interest to allow the abandonment of the Line to go forward,” given that all customers served on the line had found alternative transportation and service options, no customer or shipper opposed the abandonment, and “unlike other cases involving stranded segment issues, there remains a reasonable likelihood that rail service could be re-established over the [stranded] segment in the foreseeable future.” *Id.* at 3. In granting the abandonment exemption, the Board held “[t]he record shows that, in the specific circumstances presented here, allowing the proposed abandonment to go forward notwithstanding the possibility of creating a stranded segment is reasonable and in the public interest;” no “over-riding interests of interstate commerce” required otherwise; and “possible reconnection of the [stranded] segment to the interstate rail network . . . would eliminate the possibility of a permanently disconnected segment.” *Id.* at 4. Even if the Board determines that granting TERRI’s proposed abandonment exemption could disconnect the BC&G from the national rail system, TERRI should still be entitled to its abandonment exemption for the same reasons articulated and applied by the Board in *Sierra*. As discussed, *supra*, there are no active shippers on the Line or the BC&G, and there is more than a “possible reconnection” of the BC&G to the interstate rail network – under the Trails Act, if a need for freight service arises, reinstatement of rail service over the Line is guaranteed and required.

Should the Board need additional assurances that TERRI's proposed abandonment exemption will not isolate the BC&G, TERRI proposes that the Board grant the exemption subject to a condition prohibiting TERRI from consummating abandonment without WVSRA also filing and receiving abandonment authority for the BC&G. The Board regularly imposes conditions upon grants of abandonment exemptions,¹⁹ including prohibiting the carrier from consummating abandonment unless and until certain issues are resolved.²⁰ In the extremely unlikely event that the purchase and interim trail use agreement TERRI and WVSRA have negotiated is not executed within the prescribed statutory time limits, TERRI would "immediately return to the Board" to withdraw its NOE,²¹ or WVSRA would "immediately return to the Board to seek abandonment authority for the [BC&G.]"²²

¹⁹ See, e.g., *Sierra* at 5 (permitting abandonment notwithstanding resulting physical disconnect between remaining segment of the line and interstate rail network, but mandating that "if it becomes apparent that the [realignment project to re-connect the isolated segment] will not proceed and the [severed] segment will be permanently disconnected from the interstate rail network, Sierra should immediately return to the Board to seek abandonment authority for the [severed] segment").

²⁰ See, e.g., *Terminal R.R. Ass'n of St. Louis—Aban. Exemption—In St. Louis Cnty., Mo.*, AB 122 (Sub-No. 2X), at 3 n.4 (notice published in Fed. Reg. on Aug. 13, 2021) (permitting abandonment exemption on condition that line owner "may not consummate abandonment of the Line until [lessee rail carrier] has received authority to discontinue service over the Line"); *Union Pac. R.R.—Aban. Exemption—In Riverside & San Bernardino Cntys., Cal.*, AB 33 (Sub-No. 296X), slip op. at 2 (granting abandonment exemption on condition prohibiting UP from consummating abandonment until the steps needed to preserve UP's ability to serve shippers on the remaining segment of line had been completed); *Cent. Kan. Ry.—Aban. Exemption—In Sedgwick Cnty., KS*, AB 406 (Sub-No. 14X), slip op. at 8-9 (STB served Apr. 10, 2001) (grant of abandonment exemption was "subject to the condition that petitioner not consummate the abandonment until after it has requested dismissal of the related abandonment proceeding, in pertinent part, and has certified that its [line] relocation project . . . has been completed and that any necessary rehabilitation and maintenance has been performed").

²¹ *V & S Ry.—Discontinuance Exemption—in Pueblo, Crowley, Kiowa, & Otero Cntys., Colo.*, AB 603 (Sub-No. 4X), slip op. at 2 (STB served May 6, 2016) (stating that because carriers are not compelled to abandon lines, the Board normally grants a carrier's request to withdraw a notice of exemption for abandonment authority).

²² *Sierra* at 5.

The Board's regulations state that where, as here, a proposed abandonment meets the criteria under 49 C.F.R. § 1152.50(b), detailed review is "not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101," as the transaction is "of limited scope and continued regulation is unnecessary to protect shippers from abuse of market power." *Id.* § 1152.50(c). TERRI has clearly met the criteria under § 1152.50(b), as TERRI's President certified. *See* NOE, Ex. A. No freight traffic has moved over the Line or the BC&G in over 20 years, and there are no active shippers on either line. The parties wish to railbank TERRI's Line for interim trail use as a pedestrian and bicycle trail in tandem with the operation of an excursion train over the BC&G. Since under the Trails Act and the Board's own regulations any interim trail use must be subject to possible reactivation of rail service, railbanking TERRI's Line will not remove it from the national rail network, and therefore, will not isolate the BC&G from the interstate rail network, or in any way hinder WVSRA's ability to fulfill its common carrier obligation, should a reasonable request for service arise. Additional review of TERRI's NOE and continued regulation is simply unnecessary.

CONCLUSION

For the reasons stated herein, TERRI respectfully requests that the Board reinstate the proceedings, and expeditiously publish notice in the Federal Register, consistent with the Board's regulations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. L. Slover".

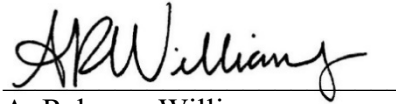
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Attorneys for The Elk River Railroad, Inc.

Dated: August 17, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of August 2021, I caused true and correct copies of the foregoing Supplemental Information Regarding Verified Notice of Exemption to be served via first-class mail, or more expeditious means, on all parties of record in this proceeding.

A handwritten signature in black ink, appearing to read "AR Williams", written over a horizontal line.

A. Rebecca Williams

An Attorney for the Elk River Railroad, Inc.