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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., Room 1034
Washington, DC 20423-0001

Re: **Docket No. FD 36273**
Chicago, Rock Island & Pacific Railroad, LLC -- Change of
Operators Exemption -- Rail Line of Coahoma County, MS

Dear Ms. Brown:

Illinois Central Railroad Company ("IC") respectfully requests that the Board reject the Verified Notice of Exemption filed in the above-captioned proceeding on February 14, 2019 by Chicago, Rock Island & Pacific Railroad, LLC ("Rock"), without prejudice to the potential resubmission of an appropriate and accurate notice for the transaction that Rock contemplates. The Board, C&J Railroad Company, d/b/a Mississippi Delta Railroad ("C&J") and now IC have all raised substantial and overlapping concerns about Rock's notice, and utilization of the abbreviated procedures of 49 C.F.R. § 1150.31, *et seq.* is inappropriate at this time and under these circumstances.

IC's specific concern is Rock's representation that it is obtaining "incidental trackage rights" over approximately 1.4 miles of IC trackage at Swan Lake, Mississippi, and the inclusion of those rights in the authority sought by Rock. Notice at 2, 4; *see* 49 C.F.R. § 1150.31(a)(4). No such "trackage rights" exist today, and IC neither has agreed nor will agree to grant "trackage rights" to Rock at Swan Lake. To the extent that Rock seeks to conduct interchange with IC at Swan Lake, operations on IC trackage in connection with such interchange are not "incidental trackage rights" and do not require or warrant Board authorization. *Norfolk Southern Railway Company -- Petition for Declaratory Order -- Interchange with Reading, Blue Mountain & Northern Railroad Company*, Docket No. NOR 42078 (STB served Apr. 29, 2003) at 4, n.5 (no "Board authority is needed for one carrier to use another carrier's track solely in connection with interchange." (citing *Black v. ICC*, 837 F.2d 1175, 1178 (D.C. Cir. 1988))).

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IC is party to a May 31, 2005 Interchange Agreement with C&J, and Rock has informally sought IC's consent to the assignment of that agreement to Rock by C&J. Yet as C&J's February 28, 2019 letter filing would appear to make clear, C&J does not itself consent to Rock's actions and has not sought to assign the interchange agreement. Rock's representation that "[a]n agreement has been reached between the County, ROCK and MSD for a change of operators on the rail line from MSD to ROCK," Notice at 3, is erroneous, at best. IC will take no action on Rock's request for consent until these matters are resolved.

Rock's notice presents other problems, as well. The mileage lengths of the three segments comprising the "Rail Line," for example, are almost hopelessly confused, and the 61.3-mile total length of the Rail Line appears to include an unidentified segment between Lula and Jonestown that was abandoned in 1983 and long owned by a private shipper. *See Illinois Central Gulf Railroad Company -- Abandonment -- In Coahoma County, MS*, Docket No. AB-43 (Sub-No. 94) (ICC served Feb. 11, 1983).

What's more, contrary to the question raised in Rock's February 27, 2019 supplemental letter filing, Coahoma County and a prior operator plainly did consummate the abandonment and discontinuance authority for the Rail Line issued in 2001. *See* Docket No. AB-579X, consummation notice filed July 25, 2001; Docket No. AB-580X, consummation notice filed July 12, 2001. Except perhaps for a 0.25-segment of track near Swan Lake as to which C&J is a rail common carrier, *see C&J Railroad Company, d/b/a Mississippi Delta Railroad -- Acquisition and Operation Exemption -- In Tallahatchie County, MS*, Docket No. FD 34673 (STB served May 5, 2005), the Rail Line is currently abandoned. Unless the intention is for Coahoma County, as owner, to resume a common carrier obligation as to that trackage, Rock has not followed the prescribed procedure for initiating regulated operations over an abandoned line in these circumstances. *Anthony Macrie -- Continuance in Control Exemption -- New Jersey Shore Line, Inc.*, Docket No. FD 35296 (STB served Aug. 31, 2010) at 3.

"Notices of exemption are intended to be used for routine and non-controversial cases. But, as filed, and in light of the issues raised by [various parties, applicant's] notice does not seem routine or non-controversial, and indeed raises more questions than it answers. Where, as here, there are too many unanswered questions, the Board will reject a notice." *FPN-USA, Inc. -- Operation Exemption -- Tijuana-Tecate Shortline*, Docket No. FD 35155 (STB served Aug. 8, 2008) at 3 (footnotes omitted). That is the appropriate course of action in this proceeding. As in *FPN*, such action "does not preclude [Rock] from filing a new notice of exemption that provides clear and adequate information and meets the relevant criteria . . ." *Id.*

IC understands that Rock's February 27th supplemental letter filing restarts the procedural schedule specified in 49 C.F.R. § 1150.32(b), including the 16-day period for publishing notice in the *Federal Register*. Should the Board not reject Rock's notice and

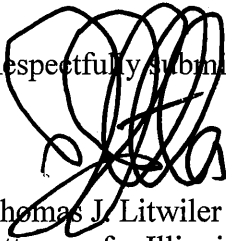
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proceed to *Federal Register* publication, IC would intend to file a petition to stay and revoke Rock's exemption. As discussed above, however, there are clearly sufficient grounds to reject Rock's notice, without prejudice, at this stage of the proceeding.

IC certifies that a copy of this filing has been served by electronic and U.S. mail on counsel for Rock and on C&J.

Respectfully submitted,



Thomas J. Litwiler
Attorney for Illinois Central Railroad Company

TJL:tl

cc: Thomas F. McFarland, Esq.
Mr. Reggie Howell