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March 6, 2020

300467

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

ENTERED
Office of Proceedings
March 6, 2020
Part of
Public Record

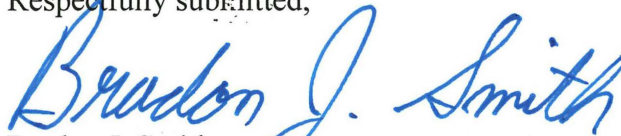
Re: **Docket No. AB-279 (Sub-No. 7X)**
Canadian National Railway Company -- Discontinuance of Trackage
Rights Exemption -- In St. Lawrence and Franklin Counties, NY

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Verified Notice of Exemption of Canadian National Railway Company Pursuant to 49 C.F.R. § 1152.50**, dated March 6, 2020. The sum of \$4,400, representing the appropriate fee for this filing, has been tendered electronically via Pay.gov.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter. Kind regards.

Respectfully submitted,



Bradon J. Smith
Attorney for Canadian National
Railway Company

BJS:tjl

Attachment

cc: Parties on Certificate of Service

FILED
March 6, 2020
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
March 6, 2020
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-279 (SUB-NO. 7X)

CANADIAN NATIONAL RAILWAY COMPANY
-- DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION --
IN ST. LAWRENCE AND FRANKLIN COUNTIES, NY

**VERIFIED NOTICE OF EXEMPTION OF
CANADIAN NATIONAL RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1152.50**

Thomas J. Litwiler
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1508

**ATTORNEY FOR CANADIAN NATIONAL
RAILWAY COMPANY**

Dated: March 6, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-279 (SUB-NO. 7X)

CANADIAN NATIONAL RAILWAY COMPANY
-- DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION --
IN ST. LAWRENCE AND FRANKLIN COUNTIES, NY

**VERIFIED NOTICE OF EXEMPTION OF
CANADIAN NATIONAL RAILWAY COMPANY
PURSUANT TO 49 C.F.R. § 1152.50**

Canadian National Railway Company (“CNR”) hereby submits this Verified Notice of Exemption under 49 C.F.R. § 1152.50 for the discontinuance of CNR’s long-dormant, limited local and overhead trackage rights on a line of railroad of CSX Transportation, Inc. (“CSXT”) extending from milepost 160.8 in Massena, New York to milepost 183.1 at the U.S.-Canadian border near Fort Covington, New York, a distance of approximately 22.3 miles in St. Lawrence and Franklin Counties, New York (the “Massena Trackage Rights”). The CSXT line over which the Massena Trackage Rights extend is among those currently proposed to be acquired by an affiliate of CNR. See Docket No. FD 36347, *Bessemer and Lake Erie Railroad Company – Acquisition and Operation – Certain Rail Lines of CSX Transportation, Inc. in Onondaga, Oswego, Jefferson, St. Lawrence, and Franklin Counties, New York*, application filed October 11, 2019. A map showing the trackage rights to be discontinued is attached hereto as Exhibit A.

In accordance with the requirements of 49 C.F.R. § 1152.50(d)(2), CNR submits the following information:

General Corporate Information: 49 C.F.R. § 1152.22(a)(1) - (2)

CNR is a common carrier by rail which owns or holds operating rights over limited trackage in the United States, including the trackage rights that are the subject of this discontinuance notice of exemption. CNR also controls a number of U.S. rail carrier subsidiaries which report to the Board on a consolidated Class I basis under the name of Grand Trunk Corporation. *See Consolidated Reporting By Commonly Controlled Railroads*, 5 S.T.B. 1050 (2001), *codified at* 49 C.F.R. § 1201(1-1)(b)(1); *Canadian National Railway Company and Grand Trunk Corporation – Control – EJ&E West Company*, Docket No. 35087 (STB served Dec. 24, 2008). On a standalone basis, CNR itself would be considered a Class III carrier in the United States. *See Canadian National Railway Company – Trackage Rights Exemption – Grand Trunk Western Railroad Inc.*, Docket No. FD 32499 (ICC served Jul. 24, 1994) at 3, n.7.

The complete name and address of CNR is:

Canadian National Railway Company
935 de La Gauchetière Street West
Montréal, Quebec, Canada H3B 2M9
(514) 399-4821

Relief Sought: 49 C.F.R. § 1152.22(a)(3)

Pursuant to the Board’s class exemption for the discontinuance of trackage rights, codified at 49 C.F.R. § 1152.50(b), CNR seeks to discontinue its limited local and overhead trackage rights over CSXT’s rail line extending from milepost 160.8 in Massena, New York to milepost 183.1 at the U.S.-Canadian border near Fort Covington, New York, a distance of approximately 22.3 miles in St. Lawrence and Franklin Counties, New York.

CNR acquired the Massena Trackage Rights in 1989 from Consolidated Rail Corporation (“Conrail”), CSXT’s predecessor, concurrently with Conrail’s acquisition of the Massena-Fort Covington line from CNR. *Canadian National Railway Company – Trackage Rights*

Exemption – Consolidated Rail Corporation, Docket No. FD 31477 (Sub-No. 2) (ICC served Aug. 4, 1989); *Consolidated Rail Corporation – Acquisition Exemption – Canadian National Railway Company*, Docket No. FD 31477 (ICC served Sep. 6, 1989). CNR has conducted no operations pursuant to the Massena Trackage Rights for at least fourteen years,¹ and there are no local shippers on the CSXT line between Massena and Fort Covington that could be served by CNR pursuant to the Massena Trackage Rights.

Pursuant to the application pending before the Board in Docket No. FD 36347, Bessemer and Lake Erie Railroad Company (“B&LE”), an indirect CNR subsidiary, proposes to acquire CSXT trackage extending north from near Woodard, New York (the “U.S. Massena Lines”) that includes the Massena-Fort Covington line on which CNR holds the inactive Massena Trackage Rights. If CNR were acquiring the U.S. Massena Lines itself, the Massena Trackage Rights would merge into CNR’s ownership of the underlying rail line, and no further agency discontinuance authorization would be needed. *E.g.*, *Norfolk and Western Railway Company – Acquisition Exemption – Consolidated Rail Corporation*, Docket No. FD 32957 (STB served Aug. 15, 1996) at 1, n.3. Because that is not the case where B&LE will be the entity acquiring the U.S. Massena Lines, CNR is submitting this notice of exemption for the formal discontinuance of its dormant Massena Trackage Rights. CNR’s intention in this regard was specifically noted in B&LE’s application to acquire the U.S. Massena Lines, *see* Docket No. FD 36347, App. at 13-14, and CNR is serving this notice on all parties of record in that docket.

¹ In CNR recently considered utilizing the trackage rights as an alternative overhead routing for trains that moved on CNR lines in Canada that were blockaded by protesters. Those trains were instead handled as detour movements by CSXT. Any such overhead train movements via the Massena Trackage Rights would not have precluded the filing of this notice of exemption, since such overhead movements could be rerouted over other lines. 49 C.F.R. § 1152.50(b).

Map: 49 C.F.R. § 1152.22(a)(4)

A map showing the location of the Massena-Fort Covington line over which CNR seeks to discontinue its inactive trackage rights is attached hereto as Exhibit A.

Applicant's Representative: 49 C.F.R. § 1152.22(a)(7)

Any correspondence regarding the proposed discontinuance should be sent to CNR's representative at the following address:

Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, IL 60606-3208
(312) 252-1508

ZIP Codes Traversed: 49 C.F.R. § 1152.22(a)(8)

The Massena Trackage Rights traverse United States Postal Service ZIP Codes 12937, 12914, 13613 and 13662.

Suitability for Other Public Purposes: 49 C.F.R. § 1152.22(e)(4)

Not applicable. Because this is a trackage rights discontinuance proceeding and not an abandonment, public use conditions would be unavailable. *E.g., BNSF Railway Company – Discontinuance of Trackage Rights Exemption – In Kootenai County, ID*, Docket No. AB-6 (Sub-No. 466X) (STB served Mar. 4, 2009).

Qualification for Class Exemption: 49 C.F.R. § 1152.50(b)

CNR certifies that it has moved no local traffic via the Massena Trackage Rights for at least two years and that any overhead traffic handled via those trackage rights could be rerouted over other lines. CNR further certifies that no formal complaint by a user of the

Massena Trackage Rights service (or a state or local governmental entity acting on behalf of such user) regarding CNR cessation of service on the line either is pending with the Board or any U.S. District Court or has been decided in favor of such complainant during the last two years. See Certification and Verification of Janet Drysdale, attached hereto as Exhibit B.

Proposed Consummation Date: 49 C.F.R. § 1152.50(d)(2)

CNR intends to consummate the discontinuance of the Massena Trackage Rights on April 26, 2020, or upon consummation of the B&LE acquisition transaction proposed in Docket No. FD 36347, whichever is later.

Notice Requirement: 49 C.F.R. §§ 1152.50(d)(2), 1105.11, 1105.12

A certification that the agencies designated in 49 C.F.R. § 1152.50(d)(1) have been served with written prefiling notice of the proposed discontinuance is attached hereto as Exhibit C. A certification that, in accordance with 49 C.F.R. § 1105.12, CNR has published notice of the proposed discontinuance in a newspaper of general circulation in each county through which the Massena Trackage Rights pass is attached hereto as Exhibit D. Because preparation of an Environmental/Historic Report is not required for CNR's proposed discontinuance of trackage rights, the notice requirements of 49 C.F.R. §§ 1105.7(b) and 1105.11 are not applicable to this proceeding.

Labor Protection: 49 C.F.R. § 1152.50(d)(2)

The appropriate level of labor protection for the transaction proposed herein is that set forth in *Oregon Short Line R. Co. – Abandonment – Goshen*, 360 I.C.C. 91 (1979). No CNR employees will be adversely affected by the proposed discontinuance.

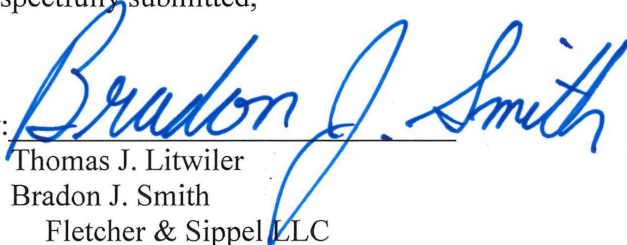
Environmental and Historic Preservation Data: 49 C.F.R. § 1105

CNR's proposed discontinuance of the Massena Trackage Rights is exempt from environmental reporting requirements. Further STB authority would be required for the owner of the track (currently CSXT, and prospectively B&LE) to abandon the Massena-Fort Covington line, and environmental matters related to any such abandonment would be considered at that time. *See* 49 C.F.R. § 1105.6(c)(5).

Under 49 C.F.R. § 1105.8(a) and (b), CNR's proposed discontinuance also is exempt from historic preservation reporting requirements. Discontinuance will not itself result in the lease, transfer or sale of a railroad's line, sites or structures, and further STB approval would be required for any abandonment of the Massena-Fort Covington line.

Respectfully submitted,

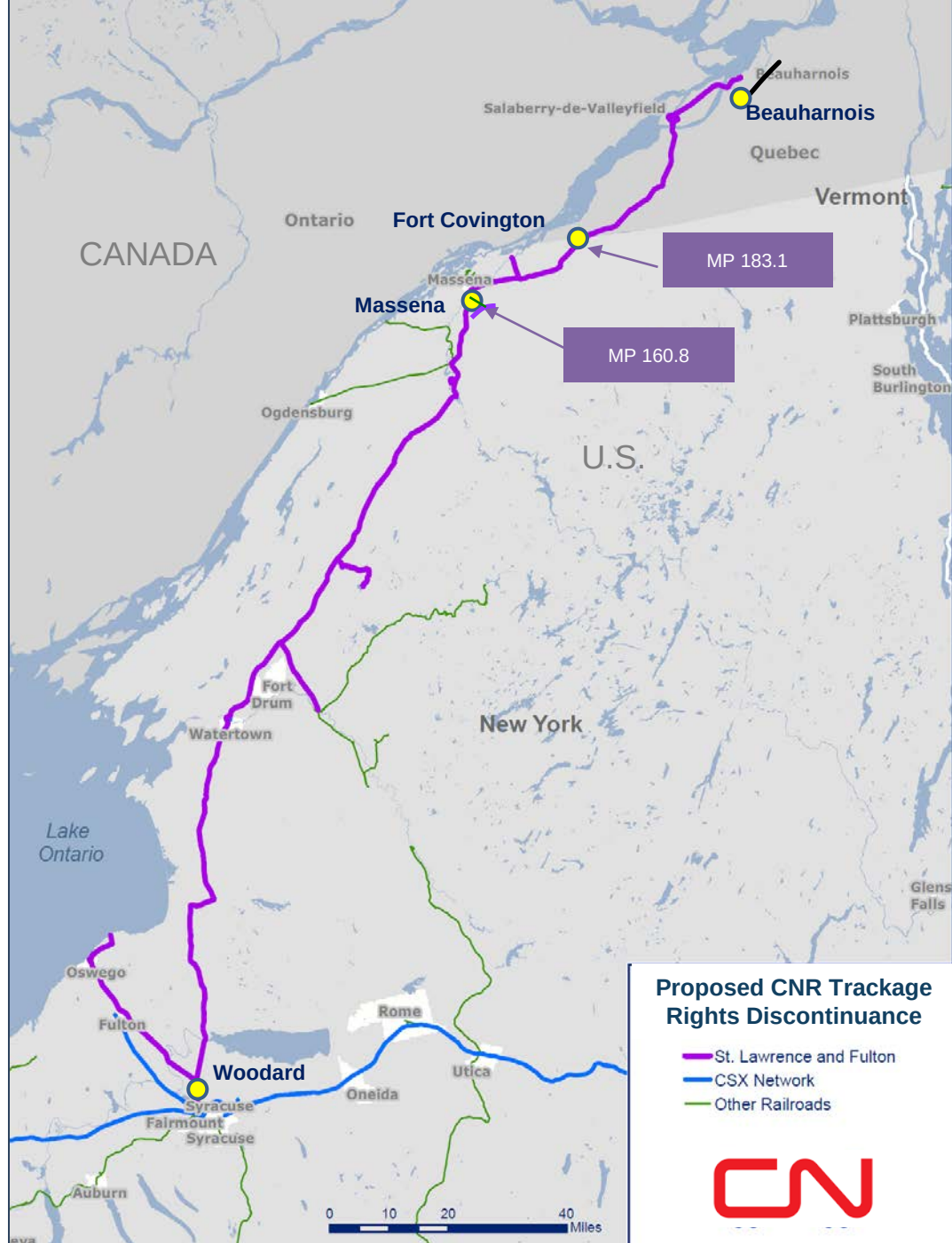
By:



Thomas J. Litwiler
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1508

**ATTORNEY FOR CANADIAN NATIONAL
RAILWAY COMPANY**

Dated: March 6, 2020

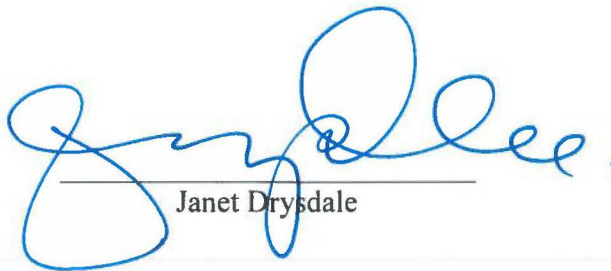


CERTIFICATION AND VERIFICATION

I, Janet Drysdale, hereby certify and verify under penalty of perjury under the laws of the United States that I am the Vice-President, Financial Planning of Canadian National Railway Company and that:

1) No local traffic has moved for at least two years via CNR's trackage rights over the rail line of CSX Transportation, Inc. between Massena and Fort Covington, New York; any CNR overhead traffic handled by CNR on the line could be rerouted over other lines; and no formal complaint filed by a user of CNR rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or any U.S. District Court or has been decided in favor of such complainant during the last two years; and

2) I have read the foregoing Notice of Exemption and know the facts asserted therein, and the same are true as stated.



Janet Drysdale

Dated: March 4, 2020

CERTIFICATE OF NOTIFICATION

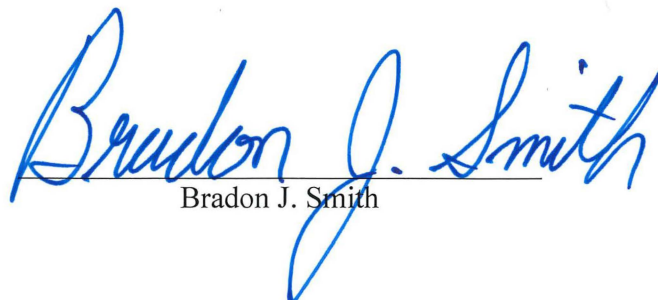
I hereby certify that on January 28, 2020, written notice in the form attached hereto and containing the information specified in 49 C.F.R. § 1152.50(d)(1) was served by first class mail, postage prepaid, upon the following agencies designated in that subsection:

Raymond F. Hessinger, P.E.
Director, Freight & Passenger Rail Bureau
New York State Department of Transportation
50 Wolf Road, POD 54
Albany, NY 12232

Military Surface Deployment & Distribution Command
Transportation Engineering Agency
ATTN: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Bldg. 1900W
Scott AFB, IL 62225-5006

Mr. Robert Ratcliffe
Chief, Conservation and Outdoor Recreation
National Park Service
1849 C Street, N.W., Org. Code 2220
Washington, DC 20240-0001

Ms. Victoria C. Christiansen
Chief of the Forest Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250-1111


Bradon J. Smith

Dated: March 6, 2020

January 28, 2020

Military Surface Deployment & Distribution Command
Transportation Engineering Agency
Attn: SDTE-SA (Railroads for National Defense)
1 Soldier Way, Bldg. 1900W
Scott AFB, IL 62225-5006

Re: **Docket No. AB-279 (Sub-No. 7X)**
**Canadian National Railway Company -- Discontinuance of Trackage
Rights Exemption -- In St. Lawrence and Franklin Counties, NY**

Ladies and Gentlemen:

On or about February 7, 2020, Canadian National Railway Company ("CNR") expects to file with the Surface Transportation Board a notice of exemption for the discontinuance of CNR's trackage rights on a line of railroad of CSX Transportation, Inc. extending from milepost 160.8 in Massena, New York to milepost 183.1 at the U.S.-Canadian border near Fort Covington, New York, a distance of approximately 22.3 miles in St. Lawrence and Franklin Counties, New York. The line traverses United States Postal Service ZIP Codes 12937, 12914, 13613 and 13662. CNR's notice of exemption will be filed pursuant to 49 C.F.R. § 1152.50(b).

We are notifying you of the proposed discontinuance in accordance with the requirements of 49 C.F.R. § 1152.50(d)(1). Should you have any questions or need additional information regarding this proposed discontinuance, please feel free to contact me at 312-252-1508. Kind regards.

Very truly yours,

Thomas J. Litwiler
Attorney for Canadian National
Railway Company

TJL:tl

CERTIFICATE OF PUBLICATION

I hereby certify that a Notice of Intent to Discontinue Trackage Rights, in the form prescribed by 49 C.F.R. § 1105.12, was published in the following newspapers of general circulation for the counties in which the subject rail line in this proceeding is located:

St. Lawrence County, NY -

North Country This Week

P.O. Box 975

4 Clarkson Avenue

Potsdam, NY 13676

Publication date: February 8, 2020

Franklin County, NY -

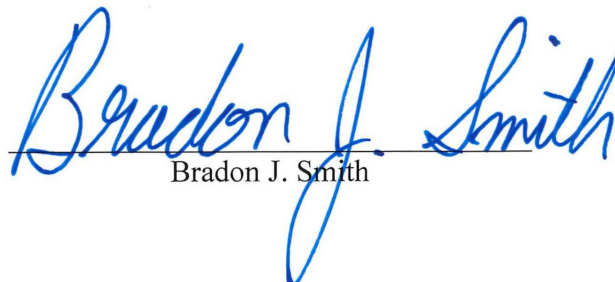
The Malone Telegram

469 East Main Street

Malone, NY 12953

Publication date: January 30, 2020

Proofs of publication from *North Country This Week* and *The Malone Times* are attached hereto.


Bradon J. Smith

Dated: March 6, 2020

AFFIDAVIT OF PUBLICATION

STATE OF NEW YORK

COUNTY OF ST. LAWRENCE } S.S.

Diane E. Dockum

Diane E. Dockum

NOTICE OF INTENT TO DISCONTINUE TRACKAGE RIGHTS -- Canadian National Railway Company Canadian National Railway Company (CNR) gives notice that on or about February 7, 2020, it intends to file with the Surface Transportation Board, Washington, DC 20423, a notice of exemption under 49 C.F.R. 1152 Subpart F - Exempt Abandonments and Discontinuances permitting the discontinuance of CNR's trackage rights on approximately 22.3 miles of rail line of CSX Transportation, Inc. between milepost 160.8 in Massena, New York and milepost 183.1 at the U.S.-Canadian border near Fort Covington, New York, traversing United States Postal Service ZIP Codes 12937, 12914, 13613 and 13662 in St. Lawrence and Franklin Counties, New York. The proceeding will be docketed as No. AB-279 (Sub-No. 7X). The proposed discontinuance is exempt from the Board's environmental and historic reporting requirements. 49 C.F.R. 1105.6(c) and 1105.8(b). Interested persons may make inquiries regarding environmental matters by writing to the Office of Environmental Analysis, Surface Transportation Board, Washington, DC 20423 or by calling that office at 202-245-0291. Appropriate offers of financial assistance to continue rail service can be filed with the Board. Public use conditions and rail banking/trails use are not available in proceedings involving only a discontinuance and not an abandonment. 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 Board's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423-0001 [see 49 C.F.R. 1104.1(a) and 1104.3(a)], and one copy must be served on CNR's representative [see 49 C.F.R. 1104.12(a)]. Questions regarding offers of financial assistance or the Board's discontinuance procedures may be directed to the Board's Office of Public Assistance, Governmental Affairs & Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on CNR's representative at the following address: Thomas J. Litwiler, Esq., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, Illinois 60606-3208. (312) 252-1500

being duly sworn, deposes and says that she is the Chief Clerk of the Classified Advertising Department, **NORTH COUNTRY THIS WEEK**, a weekly newspaper published in Potsdam, St. Lawrence County, and that the annexed advertisement has been regularly published in the said newspaper and on the website owned by said newspaper, www.northcountrynow.com, on the following dates:

February 5, 2020

February 8, 2020

SUBSCRIBED and SWORN TO BEFORE ME this

12th day of February, 2020

Miki L. Crary

Notary Public, St. Lawrence County

MIKI L. CRARY
Notary Public, State of New York
No. 01CR5012386
Qualified in St. Lawrence County
My Commission Expires June 15, 2023

MALONE NEWSPAPER CORPORATION
Legal Advertisement Affidavit
STATE OF NEW YORK
FRANKLIN COUNTY

MALONE TELEGRAM

FLETCHER & SIPPEL LLC
29 N WACKER DR SUITE 800
IL 60606

REFERENCE: 120305
20437081 NOTICE OF INTENT TO

Nicole Lamica, being duly sworn, says that she is a principal clerk of Malone Newspaper Corporation, a corporation duly organized and existing under the laws of the State of New York, and having its principal place of business in the Village of Malone, New York, and the said Corporation is the publisher of the MALONE TELEGRAM, a newspaper published in the Village of Malone, Franklin County, and State of New York, and that a LEGAL NOTICE, of which the annexed is a printed copy has been published in said newspaper on the dates listed below;

Nicole Lamica
Nicole Lamica, Principal Clerk

PUBLISHED ON: 01/30

TOTAL COST: 43.88 AD SPACE: 88 LINE
FILED ON: 01/30/20

Sworn to before me this

7 day of Feb, 2020

GEORGE McLAUGHLIN
Notary Public, State of New York
Franklin County No. 4781786
My Commission Expires March 30, 2023

NOTICE OF INTENT TO
DISCONTINUE TRACKAGE
RIGHTS --

Canadian National Railway
Company

Canadian National Railway Company (CNR) gives notice that on or about February 7, 2020, it intends to file with the Surface Transportation Board, Washington, DC 20423, a notice of exemption under 49 C.F.R. 1152 Subpart F - Exempt Abandonments and Discontinuances permitting the discontinuance of CNR's trackage rights on approximately 22.3 miles of rail line of CSX Transportation, Inc. between milepost 160.8 in Massena, New York and milepost 183.1 at the U.S.-Canadian border near Fort Covington, New York, traversing United States Postal Service ZIP Codes 12937, 12914, 13613 and 13662 in St. Lawrence and Franklin Counties, New York. The proceeding will be docketed as No. AB-279 (Sub-No. 7X).

The proposed discontinuance is exempt from the Board's environmental and historic reporting requirements. 49 C.F.R. 1105.6(c) and 1105.8(b). Interested persons may make inquiries regarding environmental matters by writing to the Office of Environmental Analysis, Surface Transportation Board, Washington, DC 20423 or by calling that office at 202245-0291.

Appropriate offers of financial assistance to continue rail service can be filed with the Board. Public use conditions and rail banking/trails use are not available in proceedings involving only a discontinuance and not an abandonment. 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 Board's Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423-0001 [see 49 C.F.R. 1104.1(a) and 1104.3(a)], and one copy must be served on CNR's representative [see 49 C.F.R. 1104.12(a)]. Questions regarding offers of financial assistance or the Board's discontinuance procedures may be directed to the Board's Office of Public Assistance, Governmental Affairs & Compliance at 202-245-0238. Copies of any comments or requests for conditions should be served on CNR's representative at the following address:

Thomas J. Litwiler, Esq.
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606-3208
(312) 252-1500

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March, 2020, a copy of the foregoing
**Verified Notice of Exemption of Canadian National Railway Company Pursuant to 49
C.F.R. § 1152.50** was served by U.S. first class mail, postage prepaid, upon all parties of record
in STB Docket No. FD 36347.


Bradon J. Smith