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Office of the Attorney General

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August 25, 2004

Via Facsimile and Federal Express

ENTERED
Office of Proceedings

Mr. Vernon Williams, Secretary
Surface Transportation Board
Mercury Building
1925 K Street, N.W.
Washington, D.C. 20423

AUG 26 2004

Part of
Public Record

Re: STB Docket No AB-307 (Sub-No. 5X)
Wyoming and Colorado Railroad Company, Inc.
Abandonment Exemption - in Carbon County, Wyoming

Dear Secretary Williams:

The State of Wyoming hereby moves the Surface Transportation Board ("STB") for an extension of fifteen (15) days in which to file any response, protest, or request for conditions of public use to the Wyoming and Colorado Railroad Company's ("WyCo") petition for exemption to abandon rail-line from Saratoga, Wyoming to Walcott, Wyoming [STB Docket No AB-307 (Sub-No. 5X)]. Because of the substantial impact that any decision in this matter will have on Carbon County, Wyoming, and the difficulty in calling a public meeting of County Commissioners prior to September 1, 2004, the State of Wyoming requests an extension of time in which to respond to WyCo's petition for exemption.

The rail line at issue historically provided service to a mill located in Carbon County, Wyoming. *WyCo Petition for Exemption*, p. 4. Until January 2003, this line was profitable for WyCo. *WyCo Petition for Exemption*, p. 4. Less than 10-months later, the mill was purchased by Intermountain Resources, LLC ("Intermountain") in October 2003. *Letter from Intermountain dated August 17, 2004*. The mill is scheduled to be restarted between November 1, 2004 and December 15, 2004. *Letter from Intermountain dated August 17, 2004*.

However, the start-up is dependent upon continued rail service. According to Intermountain, 75% of its finished product and 85% of its by-product requires shipment by rail for the venture to be profitable. This statement seems to be in contrast to WyCo's claim that traffic volumes upon reopening would "not justify WyCo retaining the Line." *WyCo Petition for Exemption*, p. 4. Carbon County has a population of about 16,000 people. It is a rural community which is dependent on the local industries and tourism for its continued economic viability. The Intermountain mill will provide good paying jobs in Carbon County. In the isolated, rural communities of Carbon County, these jobs are necessary for the future development of the local rural economy.

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To utilize the exemption procedures when abandoning a line, the petitioner must present evidence to demonstrate that regulation is not necessary to carry out the transportation policy of section 10101 [49 U.S.C. §10101.] 49 U.S.C. §10502(a)(1). The STB is required to consider those elements of the rail transportation policy relevant to the statute from which exemption is sought in determining whether an exemption should be granted. *Village of Palestine v. I.C.C.*, 936 F.2d 1335 (D.C. Cir. 1991). Since WyCo seeks exemption from procedures for abandonment (49 U.S.C. §10903), WyCo must present evidence sufficient for the STB to find that the future public convenience and necessity require or permit the abandonment or discontinuance of service. 49 U.S.C. §10903(d)(2). See *Burlington Northern Railroad Company- Abandonment Exemption- Klickitat and Goldendale, WA.*, I.C.C. Docket No. AB-6 (Sub No. 335X), 1992 WL 24808, *2 (January 30, 1992).

In order for the Office of the Governor to discuss the impact of abandonment on rural and city development and to prepare and present evidence that future public convenience and necessity do not permit the abandonment of the Carbon County line by WyCo, the Governor's office must meet with the Carbon County Commissioners to address the economic impact to Carbon County, Wyoming. Commission meetings are held on the first and third Tuesday of each month. The next Carbon County Commissioner's meeting is scheduled for September 7, 2004.

According to the STB's order dated August 4, 2004, protests and requests for public use conditions are due September 1, 2004. Since the Carbon County Commissioners will not meet until September 7, 2004, it is impossible for the Governor's office to meet with the Commissioners and prepare a protest or request for public use agreement prior to September 1, 2004. In light of the substantial impact on economic development that a decision in this matter will have on Carbon County, Wyoming, the Office of the Governor respectfully requests that the STB extend the period in which it will receive protests, requests for public use, and all other responses to the WyCo petition for exemption until September 16, 2004. Since the reopening of the Saratoga mill is less than two (2) months away, there is a strong likelihood that closure of the Carbon County line is prohibited due to the public need for rail service to foster imminent future economic development in Carbon County, Wyoming.

The State of Wyoming has conferred with counsel for WyCo, Karl Morell. WyCo has no objection to the extension requested by Wyoming so long as it does not change the decision date contemplated by the Surface Transportation Board.

Pursuant to applicable rules, I, Thomas W. Rumpke, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.

Respectfully submitted,



Thomas W. Rumpke
Senior Assistant Attorney General

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing letter, addressed to The Honorable Vernon Williams, was placed in the U.S. mail, via *Federal Express*, this 25th day of August, 2004, to the following:

Karl Morell
Ball Janik LLP
1455 F Street, NW, Ste 225
Washington, DC 20005

Kari S. Rayment
Kari Rayment
Paralegal

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