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November 13, 2019

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

Re: Docket No. AB-1269 (Sub-No. 1X), *Iowa Traction Railway Company --
Discontinuance of Service Exemption -- in Cerro Gordo County, IA*

Dear Ms. Brown:

Hereby transmitted is a Reply In Opposition To Petition To Reject Notice Of Exemption
for filing with the Board in the above referenced matter.

Very truly yours,



Thomas F. McFarland
Attorney for Applicant

TMcF:kl:\1871\efSTB4

cc: Messrs. Richard Welsh, *dick156@earthlink.net*
Aaron Burnett, *aburnett@masoncity.net*
Michael Johns, *mjohns@progressiverail.com*
Lynn Hawbaker, *betthawbaker@aol.com*

BEFORE THE
SURFACE TRANSPORTATION BOARD

IOWA TRACTION RAILWAY	)	
COMPANY -- DISCONTINUANCE OF	)	DOCKET NO. AB-1269
SERVICE EXEMPTION -- IN CERRO	)	(SUB-NO. 1X)
GORDO COUNTY, IA	)	

**REPLY IN OPPOSITION TO PETITION
TO REJECT NOTICE OF EXEMPTION**

IOWA TRACTION RAILWAY COMPANY
12045 West State Street
Mason City, IA 50401

Applicant

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DATE FILED: November 13, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

IOWA TRACTION RAILWAY	)	
COMPANY -- DISCONTINUANCE OF	)	DOCKET NO. AB-1269
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GORDO COUNTY, IA	)	

**REPLY IN OPPOSITION TO PETITION
TO REJECT NOTICE OF EXEMPTION**

Pursuant to 49 C.F.R. § 1104.13(a), IOWA TRACTION RAILWAY COMPANY (IATR) hereby replies in opposition to a Petition to Reject a Notice of Exemption (Petition) filed by National Association of Reversionary Property Owners (NARPO) on November 12, 2019. The Notice of Exemption was filed on November 6, 2019. The Notice seeks a class exemption for IATR to discontinue rail service over a 3-mile rail line at Mason City, Cerro Gordo County, Iowa. That line extends between Milepost 155.5 located approximately 100 yards south of Elm Drive and Milepost 152.5 located approximately 600 yards north of County Highway B-20 in Mason City, Iowa (the Rail Line).

IATR has stated that if the exemption were to be granted, the right-of-way of the rail line would be conveyed to the City of Mason City (the City) for railbanking and interim recreational trail use in accordance with the National Trails System Act (NTSA), 16 U.S.C. § 1247(d).

NARPO contends that such a conveyance would be unlawful on the ground that trail use is not available for a right-of-way which is the subject of a discontinuance of rail service.^{1/}

REPLY IN OPPOSITION

Contrary to NARPO's contention, discontinuance authority alone is sufficient to qualify a rail line right-of-way for railbanking and interim recreational trail use under NTSA where, as here, the rail line was abandoned before discontinuance authority was sought. Thus, in *Chillicothe-Brunswick Rail Maintenance Authority -- Discontinuance Exemption -- in Livingston, Lynn and Chariton Counties, MO*, 2008 WL 141856 (STB Docket No. 1001X, decision served January 15, 2008) (*Chillicothe*), the Board said at *2:

Based on the facts presented in these proceedings, it appears that here . . . discontinuance authority is the only authority that would be needed to abandon the line, and that, accordingly, the Trails Act is available . . .

In that case, a Rail Maintenance Authority (CBRA) sought an exemption for discontinuance of its leased trackage rights over the line. The rail line had been abandoned more than 20 years previously. The Board ruled (at *3):

. . . Chillicothe . . . need not seek authority to abandon a line that has already been abandoned. Accordingly, the Trails Act applies even though CBRA and Motive Rail sought only discontinuance authority . . .

Accord: Vermont & Vt. Ry. -- Discontinuance -- Crittenden Co. VT, 3 I.C.C.2d 903, n. 2 (1987)

(. . . Thus, the only authority necessary for these parties to abandon the line is authority for Vermont Railway to discontinue its operation.”).

^{1/} Essentially the same Petition and Reply in Opposition were filed in this proceeding in regard to a Draft Environmental and Historic Report (DEHR). The DEHR was submitted on October 18, 2019. NARPO's Reply was filed on October 30, 2019. A Notice of Exemption of abandonment of the Rail Line was rejected in Docket No. 1269X, *Iowa Traction Ry. -- Aband. Exempt. -- in Cerro Gordo County, IA*, decision served August 5, 2019.

Those decisions refute the contentions in NARPO's Petition. NARPO contends that since 1988 "a series of non-carriers" have had ICC and STB authority to operate . . . the rail line in question. (Petition at 2). Contrary to NARPO's contention, IATR and its predecessor are STB-authorized rail carriers (not "non-carriers"). Indeed, it is the rail carrier status of IATR and its predecessor, by virtue of being authorized to operate the rail line, that triggered STB and ICC jurisdiction over the line for more than 30 years, and it is that status that requires IATR to obtain Board authority or an exemption for discontinuance of its authority to operate over the line.

NARPO argues that the Board does not have jurisdiction over IATR's proposed discontinuance of service because a previously authorized abandonment of the line was consummated. (Petition at 2-3). However, it is the discontinuance proposed by IATR, a Board-authorized rail carrier, that triggers Board jurisdiction, not an abandonment that no longer requires Board authority.

Thus, the present case is in harmony with the *Chillicothe* and *Vermont* decisions in deciding that a rail line that has previously been abandoned need not be abandoned once again in order to make the line available for railbanking and recreational trail use. Indeed, the Board would lack authority to require the noncarrier owners^{2/} of those abandoned rail lines to get additional abandonment authority. Discontinuance authority is all that is required to abandon such a line in the above circumstances. In addition, there is no valid distinction between the present case and those cases on the ground that a prior abandonment of the subject line was consummated. The abandonments in the *Chillicothe* and *Vermont* cases were effectively

^{2/} The noncarrier owner in the *Chillicothe* case was Green Hills Development. In the *Vermont* case, it was the State of Vermont. In the present case, it is Backtrack, Inc.

consummated when the rail lines in those cases were acquired by noncarriers not subject to Board jurisdiction.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, NARPO's Petition should be denied.

Respectfully submitted,

IOWA TRACTION RAILWAY COMPANY
12045 West State Street
Mason City, IA 50401

Applicant

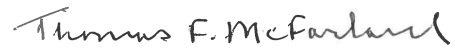
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Attorney for Applicant

DATE FILED: November 13, 2019

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2019, the foregoing document, Reply In Opposition To Petition To Reject Notice of Exemption, was served on Richard Welsh, National Association of Reversionary Property Owners, 1100 Bellevue Way NE, Ste. 8A, PMB 719, Bellevue, WA 98004, by e-mail to dick156@earthlink.net.



Thomas F. McFarland